

IN THE MATTER OF:)
)
PUBLIC HEARING ON PROPOSED)
DUST RULES)

Pages: 1 through 314

Place: Prestonsburg, Kentucky

Date: August 10, 2000

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UNITED STATES DEPARTMENT OF LABOR

IN THE MATTER OF:)
)
PUBLIC HEARING ON PROPOSED)
DUST RULES)

Holiday Inn
Highway 23
Prestonsburg, Kentucky
Thursday,
August 10, 2000

The parties met, pursuant to the notice, at
8:30 a.m.

BEFORE: MARVIN NICHOLS, Moderator

APPEARANCES:

Panel Members:

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RON FORWARD, ECONOMIST
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ALSO IN ATTENDANCE:

PAUL HEWETT, INDUSTRIAL HYGIENIST, NIOSH

EILEEN KUEMPEL, SENIOR PHYSICAL SCIENTIST, NIOSH

RODNEY BROWN
OFFICE OF INFORMATION AND PUBLIC AFFAIRS

PAM KING
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I N D E X

	PAGE
JOSEPH MAIN, UNITED MINE WORKERS OF AMERICA	24
TOM WILSON, UNITED MINE WORKERS OF AMERICA	38
DARYL DEWBERRY, INTERNATIONAL EXECUTIVE BOARD MEMBER, UNITED MINE WORKERS OF AMERICA, DISTRICT 20	59
WILLIAM BOLTS WILLIS, CHAIRMAN, MINE HEALTH AND SAFETY COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 8843	80
BO WILLIS, PRESIDENT, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2274, DISTRICT 20, SUBDISTRICT 28	89
RANDY CLEMENTS, PRESIDENT, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2368	94
RICK GLOVER, UNITED MINE WORKERS OF AMERICA	102
LARRY TOLLIVER, CHAIRMAN, SAFETY COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1713	124
DANNY SPARKS, PRESIDENT, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2232	129
RICKEY PARKER, CHAIRMAN, SAFETY AND HEALTH COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2368	137
RALPH LONEY, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2232	147
ERIC BARNES, UNITED MINE WORKERS OF AMERICA	148
TOM SWEETEN, CHAIRMAN, HEALTH AND SAFETY COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1545	154
THOMAS KLAUSING, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2161	161
J.R. PATSEY, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1713	172

LARRY PASQUALE, UNITED MINE WORKERS OF AMERICA
LOCAL UNION 2133, DISTRICT 20

176

I N D E X

	PAGE
WILLIAM CHAPMAN, PRESIDENT, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1793	180
RICKEY KORNEGAY, EXECUTIVE BOARD MEMBER, UNITED MINE WORKERS OF AMERICA, DISTRICT 20	181
REGGIE STALLARD, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1760	185
WILLIAM SAWYER, SAFETY COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1926, DISTRICT 20	188
TOM MESSER, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1760	205
TERRY HUNTER, CHAIRMAN, SAFETY COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL 1926, DISTRICT 20	208
GARY TRAMELL	214
EDMOND COOK	222
CHUCK WILSON, PRESIDENT, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1545	225
MAX KENNEDY	229
JIM BRACKNER, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2245	242
BILL CAYLOR, KENTUCKY COAL ASSOCIATION	245
DAN SPINNIE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2161	259
STEVE WOLFE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1969	263
KEITH FLOWER, CHAIRMAN, HEALTH AND SAFETY COMMITTEE, UNITED MINE WORKERS LOCAL UNION 2397	266
DAVID MCATEER, UNITED MINE WORKERS OF AMERICA	291

SAFETY REPRESENTATIVE, JIM WALTERS NO. 4 MINE

I N D E X

	PAGE
GREG MAHAN, PRESIDENT, UNITED MINE WORKERS OF AMERICA LOCAL UNION	292
RANDY KLAUSING, CHAIRMAN, SAFETY COMMITTEE, OLD BEN COAL COMPANY	298
DWIGHT CAGEL, HEALTH AND SAFETY COMMITTEE, UNITED MINE WORKERS OF AMERICA LOCAL UNION 2397	307
MIKE NELSON, UNITED MINE WORKERS OF AMERICA LOCAL UNION 1867, DISTRICT 20	310

1 P R O C E E D I N G S

2 (8:30 a.m.)

3 MR. NICHOLS: Good morning. Can you hear me in
4 the back? Can you hear okay in the back?

5 ALL: Yes.

6 MR. NICHOLS: Okay. Good. Good morning. My name
7 is Marvin Nichols. I'm the Administrator for Coal Mine
8 Safety and Health with MSHA. I'll be the moderator for
9 today's public hearing. On behalf of Davitt McAteer, the
10 Assistant Secretary for MSHA, and Dr. Linda Rosenstock, the
11 Director for NIOSH, I want to welcome all of you here today.

12 This morning we will begin the public hearings on
13 two proposals which were published on July 7 in the Federal
14 Register, the joint single sample proposal and plan
15 verification proposal. Your comments here today will be
16 included in the record with both proposals.

17 Let me introduce our panel. To my left is Ron
18 Schell, the Chief of the Health Division for Coal Mine
19 Safety and Health, and to my right is Larry Reynolds with
20 the Office of the Solicitor.

21 Behind me we have Carol Jones, Director of MSHA's
22 Office of Standards, Regulations and Variances; George
23 Niewiadomski, Mine Safety and Health Specialist, Coal Mine

1 Safety and Health; Thomas Thom, Chief, Dust Division,
2 Pittsburgh Safety and Health Technology Center; John Kogut,
3 Mathematical Statistics, Office of Program, Policy and
4 Evaluation; Rebecca Roper, Senior Health Specialist, and Ron
5 Forward, Economist, both for the Office of Standards and
6 Regulations and Variances.

7 Because the simple sample is a joint MSHA/NIOSH
8 proposal, Paul Hewett, Industrial Hygienist, and Eileen
9 Kuempel, Senior Physical Scientist, are here from NIOSH.
10 Rodney Brown from MSHA's Office of Information and Public
11 Affairs is also present at the hearing. Rodney, raise your
12 hand. Rodney is in the back. He will provide press kits
13 for the media in attendance and will be available to answer
14 any press inquiries.

15 We also have Pam King from MSHA's Office of
16 Standards, Regulations and Variances. Pam greeted you when
17 you came in. If you have not signed in yet, please see Pam,
18 or if you wish to speak to get your name on the list of
19 speakers.

20 MALE VOICE: Sir, we can't hear in the back here.

21 MR. NICHOLS: You can't hear? Can you hear me
22 now?

23 MALE VOICE: Yes. Sounds good.

1 MR. NICHOLS: Okay. Good.

2 I finished up with Pam. Raise your hand, Pam. If
3 anyone wishes to speak that's not on the sign up sheet,
4 please see Pam to do that.

5 Let me talk a little bit about how the hearing
6 will be conducted. The formal rules of evidence do not
7 apply, and the hearings are conducted in an informal manner.
8 Those of you who have notified MSHA in advance will be
9 allowed to make your presentations first, and following
10 these presentations others, others who request an
11 opportunity to speak, will be allowed to do so.

12 I would ask that all questions regarding these
13 rules be made on the public record and that you refrain from
14 asking the panel members questions when we're not in
15 session.

16 A verbatim transcript of the hearing is being
17 taken, and it will be made part of the official record.
18 Please submit any overheads, slides, tapes and copies of
19 your presentations to me so that these items may be made
20 part of the record. The hearing transcript, along with all
21 of the comments that MSHA has received to date on the
22 proposed rule, will be available for review. If you wish a
23 personal copy of the hearing transcript, you should make

1 your own arrangements with the court reporter sitting to my
2 left.

3 We will also accept additional written comments
4 and other appropriate data on the proposed rule from any
5 interested parties, including those who have not presented
6 oral statements today. These written comments may be
7 submitted to me during the course of this hearing or sent to
8 the address listed in the hearing notice. All written
9 comments and data submitted to MSHA will be included in the
10 official record.

11 If you wish to present any written statements or
12 information for the record today, please identify them.
13 When you give them to me, I will identify them by title as
14 being submitted for the record. Once again, Pam King
15 sitting at the back at the door has an attendance sheet that
16 you may wish to register your presence here today. To allow
17 for the submission of post-hearing comments and data, the
18 record will remain open until September 8, 2000.

19 As you may know, we held a hearing on Monday,
20 August 7, in Morgantown, West Virginia. We have another
21 hearing scheduled for Salt Lake City on August 16 from
22 8:30 a.m. until 5:30 p.m. or, excuse me, 5:00 p.m. We
23 scheduled this hearing to run all day today, and, if

1 necessary, we'll continue tomorrow morning.

2 Before we begin, let me give you some background
3 on the proposals we're addressing here this morning. First,
4 the single sample joint proposal. In it, the Secretary of
5 Labor and the Secretary of Health and Human Resources
6 announced their proposed finding in accordance with the
7 Federal Mine Safety and Health Act of 1977 that the average
8 concentration of respirable dust which each miner in the
9 active workings of the coal mine is exposed can accurately
10 be measured over a single shift. In this proposal, the
11 Secretaries are proposing to rescind a 1972 finding on the
12 accuracy of such single shift sampling.

13 The joint proposal also addresses the final
14 decision and Order in the National Mining Association v.
15 Secretary of Labor issued by the United States Court of
16 Appeals for the Eleventh Circuit on September 4, 1998. That
17 case vacated a 1998 joint finding and MSHA's proposed policy
18 concerning the use of single full shift respirable dust
19 measurements to determine non-compliance when the applicable
20 respirable dust standard was exceeded.

21 As most of you know, the single sample issue has
22 been through a long public process, which is outlined in the
23 preamble to the proposal. That process ended with the

1 September 4, 1998, ruling by the United States Court of
2 Appeals for the Eleventh Circuit. The Court vacated the
3 1998 joint finding concluding that the record contained no
4 finding of economic feasibility and that MSHA failed to
5 comply with Section 8811(a)(6) of the Mine Act.

6 Therefore, in response to the Court's ruling, the
7 Secretaries are proposing to add a new mandatory health
8 standard to 30 CFR, Part 72. The 1972 joint notice of
9 finding would be rescinded, and a new finding would be made
10 that a single full shift measurement will accurately
11 represent atmospheric conditions to which a miner is exposed
12 during such shift. This finding is the basis for the new
13 proposed mandatory health standard.

14 MSHA believes that single shift, single sample
15 measurements are more protective of miner's health than the
16 current practice of averaging multiple samples. The process
17 of averaging dilutes a high measurement made at one location
18 with lower measurements made elsewhere. MSHA recognizes
19 that single full shift samples have been used for years by
20 OSHA and at metal and non-metal mines in this country.

21 The coal mining community had the opportunity to
22 experience use of single full shift measurements for a two
23 year period in 1992 and 1993 and from May, 1998, until

1 September, 1998, when the Court of Appeals vacated the
2 agency's finding. We're interested in your comments
3 concerning the application of single full shift samples at
4 your mine during those two periods.

5 Additionally, because the proposal would be
6 implemented as a mandatory health standard, all elements of
7 Section 101(a)(6)(A) of the Mine Act have been addressed in
8 this proposal. These include the portions of the proposal
9 which addressed health effects, develop a quantitative risk
10 assessment and the significance of risk. We're seeking your
11 comments on this proposal as well as on plan verification.

12 The plan verification proposal is based in
13 significant part on recommendations contained in the 1996
14 report of the Secretary of Labor's Advisory Committee on the
15 Elimination of Pneumoconiosis. That report was based on the
16 studies and discussions of representatives from labor,
17 industry and neutral experts. They believe that if the
18 recommended changes were made, black lung disease could be
19 eliminated, and confidence would be restored to the federal
20 program to control coal mine respirable dust levels.

21 The plan verification proposal adopts three key
22 recommendations of the advisory committee. One, MSHA should
23 take full responsibility for all respirable dust sampling

1 for compliance purposes; two, MSHA should verify ventilation
2 plans at typical production levels; and, three, MSHA should
3 require operators to record production levels and dust
4 control parameters to monitor dust levels.

5 Under the plan verification rule, all the existing
6 requirements in our regulations at 30 CFR, Parts 70 and 90,
7 for underground coal mine operators to conduct respirable
8 dust sampling would be revoked. MSHA would assume
9 responsibility for all sampling to determine if miners were
10 overexposed to respirable coal mine dust. This includes
11 bimonthly sampling, abatement sampling, sampling to
12 establish a reduced standard in mines for quartz as present
13 and Part 90 sampling for miners who have evidence of the
14 development of pneumoconiosis.

15 Since MSHA would conduct all sampling, the miners'
16 representative would have the right to observe sampling with
17 no loss of pay. Before approving ventilation plans, MSHA
18 would conduct verification sampling under typical production
19 levels with only the controls listed in the plan in effect
20 and for the full shift. This would assure that miners are
21 not overexposed to respirable dust.

22 The results of these verification samples must be
23 below the critical values listed in Section 70.209 of the

1 proposal before MSHA would approve the plan. The proposal
2 defines full shift differently for purposes of plan
3 verification and abatement sampling and for bimonthly
4 compliance determination. The proposal would revise the
5 existing definition of concentration so that it is an eight
6 hour equivalent measure even if the work shift is longer
7 than eight hours.

8 In addition, under the proposal only MSHA samples
9 would be used to establish a reduced standard in the
10 underground coal mines for quartz as present. This would
11 change the existing procedure, which allows operators to
12 submit samples which are averaged with MSHA samples.

13 Finally, MSHA would allow mine wall mine operators
14 to use on a limited basis either powered air purifying
15 respirators or administrative controls when all feasible
16 engineering controls cannot maintain respirable dust levels
17 at or below the applicable standard.

18 Coal mine operators must first request that the
19 Administrator for Coal Mine Safety and Health determine that
20 all feasible engineering controls are in place. If so, MSHA
21 would grant the operator interim ventilation plan approval.
22 However, the operator must implement any new feasible
23 engineering control which may become available.

1 In response to comments we got at our Morgantown
2 hearing, we'd like to spend just a few minutes outlining in
3 greater detail the major provisions of these rules. Ron is
4 going to give a short presentation, and then we'll begin
5 taking comments.

6 MR. SCHELL: Would you just give us a second to
7 set up?

8 Some of the guys in the back, there are some
9 chairs up here if you'd like to come up in about the second
10 or third row. This would be a good time to do it.

11 (Pause.)

12 MR. SCHELL: Can you guys hear me in the back?
13 Can you hear me now? Is this better?

14 ALL: Yes.

15 MR. SCHELL: Okay. I'm just going to have to hold
16 this.

17 Guys, I'm going to try to make this short. We're
18 doing it based on a request that came out of the hearing in
19 Morgantown. I hope all of you can see the charts up there
20 because I'm not going to take the time to read everything
21 that's on this chart.

22 The thing I do want you to know -- move to that
23 next slide, would you, John? What I do want you to know is

1 the way we've set this up is on the left-hand side are the
2 current requirements under the rules, and you guys are
3 familiar with that. Then on the other side of the chart
4 what we've done is put the new requirements so you can sort
5 of visually get an idea of what the current requirements are
6 and then how we're proposing to change those requirements in
7 this rule.

8 Like I say, I'm going to try to keep this short.
9 Go ahead to the next one. Basically there are four things
10 that we're doing with these proposed rules. We're
11 addressing effective plans, we're addressing compliance with
12 these plans, we're addressing monitoring of plan
13 effectiveness, and we're addressing abatement.

14 The point I want to make, guys, is mining isn't
15 like any other industry. In most industries the first thing
16 you do is you go out to sample to determine if there's a
17 hazard. We don't have to do that in the mining industry.
18 We know that when you cut coal or when you transport coal,
19 coal dust is being generated, and that coal dust, whether it
20 be respirable coal mine dust or quartz dust, can be
21 unhealthy for you, so you have to start out recognizing you
22 have to control dust.

23 What keeps miners healthy are dust controls in

1 place that limit your exposure, and those controls have to
2 be in place every shift because you're going to be exposed
3 to that hazard every shift, so to us the key of these new
4 rules are to have an effective control plan that works and
5 have an effective control plan that works every shift.

6 I'm not saying that monitoring isn't important.
7 It is. Monitoring is key to making certain that that
8 control plan continues to work.

9 MALE VOICE: The mike is out.

10 MR. SCHELL: The mike is out?

11 MALE VOICE: You're back on.

12 MR. SCHELL: Back on? Can you hear to me now if I
13 don't touch it?

14 MALE VOICE: Yes.

15 MR. SCHELL: Okay. I'm going to pretend like I'm
16 eating this. You guys in the back, if it goes down yell at
17 me again, would you?

18 Again, controls are keys to protecting you guys.
19 Monitoring ought to tell us if those controls are working.
20 Abatement ought to assure us that those controls are
21 working, so in this proposal we are really focusing
22 primarily on getting effective controls and making certain
23 those controls are placed every shift that you're working.

1 On average -- on average -- you guys work 400 shifts a year.
2 We want you to be protected on 400 shifts a year.

3 How are we proposing to have effective plans?

4 Again, like I say, this is key to these regulations.

5 Simple. We want dust control plans in place that limit your
6 exposure to acceptable levels. Secondly, we want those dust
7 controls in place so that you're protected even at the upper
8 limits of production.

9 What these rules say is from now on we want those
10 dust controls to protect you for the full shift, not just
11 for the eight hours that we were sampling in the past. The
12 key to this proposal, and you guys all know what an average
13 is. Somewhere in the middle. You've got the low and the
14 high, and the average is somewhere in the middle.

15 Right now we're verifying those plans at about 60
16 percent of the average. Sixty percent of the average.
17 We're proposing that in these rules we're going to make sure
18 that those plans work above the average. A key ingredient.
19 To make sure we know it's working above the average in terms
20 of production, we're going to require operators to maintain
21 records on what the production is on every MMU so we can go
22 in and see what the production is.

23 Lastly, or, excuse me, next, we're going to verify

1 those plans. MSHA is going to verify the plans through full
2 shift sampling at the upper limits of production, and the
3 only controls that the operator can have in place when we're
4 verifying are the ones specified in the plan.

5 I know some of you here I've had discussions where
6 we've had conversations about the operator having controls
7 greater than those in the plan in place when we sample.
8 Verification sampling. They have to reduce those controls
9 to what they say is in the plan. We give them a range of up
10 to 15 percent above because we know we can't always reach
11 100 percent.

12 Another key point. That plan has to be verified
13 on both the high risk occupation, the designated occupation,
14 and on continuous miner sections on the roof bolting, and we
15 don't just look at respirable coal mine dust. We look at
16 respirable coal mine dust, the two milligram standard, and
17 we look at quartz separately, so that plan has to be
18 verified on total dust and on quartz, 100 micrograms of
19 quartz.

20 That verification sampling could take anywhere
21 from one to ten shifts or even more because again it's got
22 to be at high production with only the controls specified in
23 the plan in place. We do have a provision in there that

1 says if we can't verify that plan on long walls -- if we
2 can't verify that plan on a long wall -- and all engineering
3 controls are in place, we will consider the use of PAPRs,
4 airstream helmets or administrative controls downwind of the
5 shear operator. Only downwind of the shear operator.

6 You have to control to the standard to the shear
7 operator. With people going downwind, we recognize there
8 might be some occasions where they aren't protected. There
9 we're going to consider PAPRs and administrative controls.

10 A plan is no good unless it's in place every
11 shift.

12 MALE VOICE: The mike is out.

13 MR. SCHELL: Back on?

14 MALE VOICE: No.

15 MR. SCHELL: Let me try this again. Can you hear
16 me back there? Okay, guys? Now?

17 ALL: Yes.

18 MR. SCHELL: A plan is no good unless it operates
19 every shift. So what are we going to do to make sure that
20 that plan is operating every shift? We're going to do what
21 we currently do, and that's require mine operators to check
22 that plan before production on every shift. The difference?
23 What they're going to be checking is that plan that's been

1 verified at the upper limits of production with only the
2 controls listed in the plan in place.

3 In addition to that, we're going to continue to
4 check it when we check to make sure the operator is doing
5 their on shift examinations during our regular inspections,
6 but we're going to be there six times a year sampling where
7 we're going to check it, and when abatement sampling occurs
8 MSHA is going to do that abatement sampling. We're going to
9 be looking to make sure they're doing their on shift
10 examinations.

11 Also, we're going to be looking at their
12 production records because if we see that their production
13 is way above what that plan was verified at, they're going
14 to have to go back and reverify that plan at that higher
15 production. The key, guys. You've got to have a good plan
16 that protects you. You've got to have that plan working
17 every shift. That's what we're trying to do with these
18 rules, and we're really soliciting your comments on what we
19 can do to make that more effective.

20 How are we going to address monitoring? Marvin
21 mentioned that we're going to assume responsibility for all
22 compliance sampling. The key to that is that sampling is no
23 longer -- compliance determinations under that sampling are

1 no longer going to be made based on averaging low dust
2 samples with high dust samples. We're going to use single
3 sample determinations. Each sample stands on its own, so if
4 one of those samples exceeds a standard a citation will be
5 issued. No more averaging. Significant improvement, guys.

6 The rule does propose that we continue sampling
7 only eight hours like we're doing now. We have, however,
8 asked for comments as to whether or not we ought to be
9 conducting full shift sampling during compliance sampling.
10 The reason we went with eight hours is since the primary
11 purpose of that sampling was to tell us whether that plan
12 continues to protect you or not, we thought an eight hour
13 sample would give us a good feel because, remember, we're
14 there so we're going to know what dust controls are in
15 place.

16 We're going to know what the production is because
17 we're doing the sampling. That doesn't happen now with
18 operator sampling because we're not there. We don't know
19 what's happening, but we are soliciting your comments on
20 whether MSHA compliance sampling should be full shift
21 sampling.

22 Also, when we sample we won't just sample one
23 occupation for five shifts. We're going to sample at least

1 five occupations on the MMU for one shift, so we're going to
2 be sampling six times and taking five samples. Right now
3 the operators sample one occupation. They do it on five
4 shifts.

5 We will, as the operator does, sample the roof
6 bolter six times a year, and we'll sample those designated
7 areas near the MMU six times a year just the way the
8 operator is doing now. Likewise, we'll be sampling Part 90
9 miners at the same rate that operators do now.

10 There is one difference. The outby DAs. We're
11 proposing that we sample those once a year. Right now the
12 operators sample them six times a year. The reason we're
13 proposing that is if we look at the data we issue very few
14 citations on outby DAs. Remember, I said we're going to be
15 sampling it at least once a year. If we've got a problem
16 DA, we're going to be sampling it more than once a year.

17 Again, a key ingredient we believe to MSHA taking
18 over all compliance sampling is we're going to be there. We
19 will know what the dust controls are that are in place. We
20 will know what the production is. We will be able to assess
21 the adequacy of that plan every time we sample, again going
22 back to my point. The way to protect you guys is good plans
23 that work every shift.

1 Abatement. Abatement sampling. Right now
2 operators do abatement sampling. We don't know what the
3 dust controls are in place. We don't know what the
4 production is. We're proposing to change that. MSHA will
5 do the abatement sampling. Because we're doing it, you have
6 a right to participate in that abatement sampling, a right
7 that you don't have currently. Also, abatement sampling
8 will be based on single sample measurements. Again, no
9 diluting high exposures with low exposures.

10 When we sample on an MMU, we'll sample all five
11 occupations, not just the occupation that was out of
12 compliance. If it's a DA, we'll sample that DA, and
13 compliance will be made on the basis of a single sample
14 measurement.

15 Production will be higher than when operators
16 sampled, and, key, we will sample the full shift on
17 abatement sampling. If you're working ten hours, we're
18 going to sample ten hours. We want to be comfortable when
19 we finish that abatement sampling that that plan works to
20 protect you on every shift. I keep coming back to that,
21 guys, because that's the key, the way to protect your
22 health; a good plan that works every shift.

23 I've taken more time than I intended. Marvin?

1 MR. NICHOLS: Is this mike on? Can you hear me?

2 ALL: No.

3 MR. NICHOLS: Can you hear me now?

4 ALL: No.

5 MR. NICHOLS: Let's take a five minute -- oh, it's
6 on now. There went your break.

7 Okay. We are having copies of the presentation
8 Ron made put together. We will have that by probably
9 sometime late afternoon or earlier for anybody that wants a
10 copy of that. We'll put it on the back table where Pam is.

11 Okay. I think kind of the way the hearing is
12 going to go, right now we've got 63 individuals signed up to
13 present comments.

14 MS. KING: Sixty-seven.

15 MR. NICHOLS: How many?

16 MS. KING: Sixty-seven.

17 MR. NICHOLS: Sixty-seven and growing, so I would
18 expect that we'll be here for sure all day today and
19 whatever time it takes tomorrow. Probably we will run until
20 about noon and take an hour break and then come back and
21 start again.

22 I was asked by the hotel folks to mention that
23 there's an all-you-can-eat buffet lunch here, so it's up to

1 you guys.

2 Why don't we get started? We have a shortage of
3 mikes. It would help when you come up and do your
4 presentation if you could use the podium. If you prefer to
5 use the table, then we can pass this mike back and forth.
6 When you come up and start your presentation, if you would
7 please state your name, the organization and spell it for
8 the court reporter. Spell your name.

9 Okay. Anything else? Okay. We'll get started.
10 Our first presenter is Joe Main with the United Mine Workers
11 of America. Joe?

12 MR. MAIN: Is it working back there? My voice is
13 about gone, so if it fades out just holler at me.

14 I'm Joe Main with the United Mine Workers. Since
15 I presented some extensive testimony on Monday, I'm not
16 going to be saying too much here this morning. I had
17 planned on doing some document introductions. We're going
18 to wait until the end of the hearing to do that because
19 there are some very important documents that we need to get
20 on the record, and we believe that we need to explain those
21 clearly to the panel so they understand those.

22 I would just like to start off this morning saying
23 that we appreciate the opportunity to be here and address

1 the proposal issued by MSHA. I sometimes feel that we're in
2 this Mexican standoff, and I'm trying to figure out in my
3 mind how this is all playing out, but I think it's a safe
4 thing to say that we have said from the beginning there is
5 improvements in this rule. Those deal directly with plan
6 verification and single sampling.

7 The problem with those two is that they are in
8 need of redrafting, in our opinion, and we're going to give
9 a lot of reasons why, as we already started to do on the
10 record in Morgantown. I think the presentation that was
11 given this morning, we do appreciate that, Ron, but I still
12 think it leaves a lot of things missing in those pictures,
13 and it always worries me if people don't have a good
14 appreciation for this whole process.

15 In the plan verification process, as we pointed
16 out in Morgantown, the way that's drafted is so
17 discretionary that I think in comments I've also heard from
18 the operators both sides have a belief that the proposal is
19 too discretionary to the point that nobody knows what to
20 expect when MSHA shows up at the mine. That's one major
21 problem from the outset.

22 I think there's some technical problems that are
23 going to be addressed here today with the formulas that's

1 used, the production levels, the production rates, how
2 verification will actually take place, and really in this
3 plan verification process there is a miner participation
4 issue, which is not in the rule. We keep saying that.

5 You know, as we look through the rule from front
6 to back there's no miner participation rules at all that
7 address, you know, the issues that needed to be. We all
8 know that the operators have made clear their plans to
9 oppose miner participation in plan verification since it's
10 going to be an announced proposal, and that for starters we
11 know we're in a big hold before we ever get out of the box.

12 If you look at this whole plan verification
13 process, it's the operators will do this, and MSHA will do
14 this. Other than the tag along role, there is no provisions
15 in there for miner participation involvement. You know, as
16 I sat down and started looking through this, and miners kept
17 asking me questions. Joe, what rights do we have there?

18 I said well, if MSHA would prevail in this policy
19 you would have a right to participate, which we know is
20 going to be challenged unless the operators change position,
21 but as far as having any influence over that proposal or
22 over that process just hopefully you can influence an
23 inspector, but we have no legal rights at all. That's

1 something we're taking a hard look at in terms of this plan
2 supposedly protecting miners with a lack of any clear cut
3 legal rights that miners would have in this plan
4 verification process.

5 The single shift sampling. Just to put it
6 bluntly, it ain't what miners asked for. That's been an
7 issue, one of many public hearings and much testimony before
8 in the past. Miners expect a full shift sampling to
9 represent their actual exposures, not on spotty sampling.

10 I also go back to the plan verification because as
11 MSHA pointed out, it's going to take a long time to get
12 these plan verifications in place, and if an operator passes
13 the first test, which is a pretty stringent standard, which
14 we appreciate, but once they pass that test then the real
15 back up is compliance sampling to assure that miners are not
16 in dust.

17 We get over to that side of the aisle, and we look
18 at what compliance sampling is. Hey, it's far short of what
19 miners have been saying for years. I went back through, and
20 I hope everybody has a copy of the Dust Advisory Committee
21 report because those recommendations, we took them very
22 seriously and we've recorded those, but I went back through
23 there last night just flipping through here and just looked

1 at some of the comments that miners made, the abbreviated
2 version.

3 You need to read the full text to really give you
4 a feel, but how miners talked about the need for more
5 frequent sampling, and that was based on the sampling that
6 was taking place at the time, which I understand was four
7 MSHA samples underground, two on the surface, and 30 shift
8 samples by the operator. Despite this overwhelming plea
9 from miners to increase sampling, when we look at the
10 proposal it does not do that, and there is a decrease in
11 sampling by 83 percent of the shifts sampled under this
12 proposal any way that you slice it.

13 I had miners in Morgantown after the hearing ask
14 me Jim, when is the next time you think we're going to get
15 sampled on the midnight shift? I said well, I didn't know
16 what the deal is; if it was six samples a year. They said
17 well, when are we going to get sampled on the afternoon
18 shifts? I said, you know, those are very logical questions
19 that, given the nature of the beast that we've had to deal
20 with with MSHA, there's not a whole lot of folks that rush
21 to the well that want to work overtime shifts in MSHA,
22 particularly midnights and the afternoon. I said you
23 basically run an opinion on your past history. I think it

1 will get picked up.

2 Going to the six shifts a year, sampling is an
3 issue that just cannot and will not be supported by miners
4 in the union. It's contrary to everything that's been said
5 by miners and mine workers over the years.

6 The outby sampling. There was some discussion in
7 Morgantown about that, and I think some miners made it very
8 clear that the old system or the current system is
9 inadequate. There is an entry for the sampling. I read
10 back through the notes of the July, 1998, meeting that was
11 held on plan verification, and that was one point that was
12 raised that MSHA had committed to go back and take another
13 look at. When they did, we wasn't happy with the end
14 result. They went from bimonthly sampling outby to one
15 shift outby. That's not the direction that miners had
16 perceived this whole rule to go in or the direction of the
17 reform.

18 There are several other issues that we've already
19 pointed out in the record that I think have not been clearly
20 stated here. The compliance sample. Miners have to
21 understand, and it's not in the rule, but it's the position
22 that the agency has taken, which they've informed us of,
23 that the two milligram standard as contained in the proposed

1 rule under 70.100 is not a two milligram standard when it
2 goes to be applied for compliance. It's going to be a 2.33
3 standard which the citation is going to be issued on.

4 That is not contained in the rule. It's in the
5 reference on page whatever it is there in the preamble by
6 some formula that miners, unless we tell them all this, has
7 no clue. We think that's very unfair for the agency not to
8 have stated that equivocally since I understand I have been
9 told that is their plan. It's not in the rule. It wasn't
10 publicly noticed properly for miners to have a chance to
11 respond to it.

12 Additionally, miners who work outby and miners who
13 work as Part 90 miners are going to have their standard
14 increased for compliance purposes to 1.26. Again, I think
15 that's unfair not to have that kind of standard noticed in
16 the rule for miners to clearly know these compliance
17 standards are being elevated.

18 So when you look at it you go back and say okay,
19 we're going to have six samples a year. There are going to
20 be eight hour samples, not full shift samples. They're
21 going to be based not on the two milligram standard, but on
22 the 2.33 milligram standard or 1.26 milligram standard. The
23 rules have changed there. That is not, I don't think,

1 favorable to miners.

2 If you look at the Dust Advisory Committee in the
3 recommendations of miners, I can't find anywhere where any
4 miner has gone on record where the DHC was on record saying
5 increase the dust levels. That is just totally contrary to
6 the direction of I think the entire record on reform.

7 Now, there might have been some mine operators had
8 asked for that, and I think there was some mine operators
9 that asked for some increases somewhere along the line, but
10 there is no evidence that I found where miners have come to
11 this agency and said reduce and eliminate black lung by
12 raising our dust levels. It's just not there. That's a
13 real problem that this union is not going to support, and I
14 don't think you're going to find miners who support that.

15 The whole idea of jacking up dust levels to four
16 milligrams on long walls. As we said before, that is part
17 of the deal, and this is a deal that we've sort of kind of
18 realized because there was a lot of tradeoffs for miners to
19 get two things, of course, that are still inadequate, but as
20 part of the deal a lot of miners are going to find
21 themselves working some of them in the same scheme like what
22 the miner has here now with their dust levels jacked up two
23 more milligrams, and we think that's a deterioration of the

1 protections for miners.

2 We sit back and say how in the world does that
3 accomplish the eradication of pneumoconiosis by raising the
4 dust level to four milligrams? It doesn't make sense in our
5 heads, and again we will not support that kind of a
6 proposal. As we said, too, the standards by which miners
7 can point a finger to and say MSHA, go do this, or,
8 operator, go do this, those have been wiped out of the
9 standard or out of the rules with regard to the whole
10 sampling scheme.

11 Miners have to rely on running up to Marvin
12 Nichols and whoever the new administrator will be after the
13 next President, who could be another Ford B. Ford, who made
14 a decision in 1981, whenever it was, to cut the dust
15 inspections back in coal mines right after we come out of
16 one of these reform periods and ask gee, would you come and
17 do my six dust samplings a year because you're not
18 guaranteed under the law, and there's no firm guarantee that
19 those samples will even take place two and three years from
20 now. It was a pig in a poke proposal.

21 The style of the proposal itself is laced with so
22 much policy application and laced with so much discretionary
23 control by the agency that the operators nor the miners know

1 exactly what to expect when MSHA comes out. It's sort of
2 like hopefully you're good friends with the inspector when
3 he makes a decision on a plan verification. If he happens
4 to be PO'd at you because you got on his case for something
5 that he didn't cite, I mean, this whole standard is just
6 designed in a way that allows too much personal influence in
7 the decision making process. It's not good for miners and
8 not good for mine operators. There's where we have the
9 rules played out there.

10 In terms of the ability of miners to understand
11 this rule, it is so complex it has taken lawyers, safety
12 reps. I've pointed this out to safety committees and let
13 them sit down and take a look at it. The rule is so complex
14 that if you don't have a lawyer, and I had to have a lawyer
15 with me and the good help of some MSHA folks like you to
16 really understand it. I'm saying I know so much about this
17 whole process. I've served on the DAC committee to help
18 make these recommendations, and if I can't figure this stuff
19 out how on earth is the coal miner supposed to? I've got
20 access to all these resources.

21 It's a very complicated rule, and it doesn't say
22 what it means and doesn't mean what it says because of the
23 policies that apply throughout the rules. There is so much

1 that is problematic with this rule that it overshadows the
2 good steps forward it's taken.

3 The actions taken by MSHA that they responded to
4 the four issues in a lawsuit filed by the UMWA. I'm telling
5 you here now I swear to God those ain't taken care of. I
6 think it was a disservice to the public and to the mine
7 workers for the agency to say, given the immense amount of
8 work that has been done by miners and by the union, to have
9 those four issues addressed to just chart them back in some
10 discussion in the preamble and claim to the world we
11 addressed those because that's exactly what you folks did.

12 Until I see a rule that says those, until miners
13 see a rule that says those things that we asked for, those
14 are not taken care of. We're not going to settle for policy
15 statements that could be changed by the next Administration,
16 and we're not going to settle for some assertion that
17 these had been addressed in rule making when in fact they
18 are nothing out there tangible that the miner has.

19 There is no takeover of the operator program as we
20 had envisioned. There is no takeover of the operator
21 program as recommended by the advisory committee. There is
22 no takeover of the program that would at least maintain the
23 frequency of sampling that we had in 1996, let alone today.

1 Until those things are accomplished, there will be no
2 support for the mine workers.

3 The record on the Dust Advisory Committee I think
4 is quite clear. There was a lot of big discussion. I
5 remember I think it was at the Lexington meeting you came
6 forward and talked about the possibility of MSHA doing a
7 monthly sampling scheme. I think it was 12 a year. During
8 this whole discussion, I think the advisory committee in its
9 final action made it clear that that was not acceptable to
10 the advisory committee, and when it issued its final
11 recommendation calling for at least the frequency in number
12 of those of MSHA and the operator that meant what it said.
13 At least that number.

14 For anybody to think that -- we had miners that
15 testified in Morgantown that their mine, 900 shifts a year,
16 to say on three shifts a year we're going to validate those
17 miners' exposure and say we're comfortable with that that
18 those miners are being protected and we're eradicating black
19 lung with those kinds of approaches is dead wrong. It's a
20 wrong headed approach. It flies in the face of what miners
21 have demanded for years. It flies in the face of the
22 findings of the advisory committee, and it's just totally
23 unacceptable.

1 I'm not going to spend a lot of time up here today
2 going through these, but I think that what's happened here
3 is MSHA has made a calculated decision, and maybe rightfully
4 in their own mind, that this thing is going to work. I
5 think whenever miners saw it, when we see it at the bottom,
6 and understand how this thing is really going to be
7 implemented, it's not going to work.

8 My fear is that this is the last reform that
9 miners are going to see. It took us -- to get to the stage
10 we're at today, it took us over 20 years to get here. With
11 the pace of regulatory reform in this country, I'll probably
12 be in a grave somewhere by the time this thing gets reformed
13 again, and so will a lot of miners.

14 I am not going to be one to stand up and say this
15 is the kind of reform that we need to protect the miners in
16 this country when I know it's dead wrong. I don't agree
17 with it. I think it's wrong headed, and I think the agency
18 missed the big mark when they failed to follow the
19 recommendations of that advisory committee.

20 The next time I get asked to serve on an advisory
21 committee I'm going to ask a simple question. Are you
22 really going to do what the advisory committee requests us
23 to do? If the answer is no, I'm not wasting my time.

1 I apologize to a lot of miners out there that I
2 had to come to this hearing to testify to tell what was
3 going on in the coal mines because a lot of them told me
4 Joe, the government ain't going to listen to us. They ain't
5 listened to us in the past. They're not going to listen to
6 us again. I said this time, guys, I think they will.

7 There's so much on the record here. There is such
8 a case that's been built that miners have been put in
9 unhealthy dust for so much of their lives. We've had just
10 thousands and thousands of miners dying from this disease.
11 We've got all this corruption going on in this country with
12 the sampling program. I think this time they will listen.

13 I was wrong, and I apologize, and I will not bring
14 miners back to go through that exercise again. If the
15 government ain't going to follow the recommendations of
16 their own committee, by golly, don't appoint them and waste
17 the public's time.

18 Now that you've done it, I think the proclamation
19 on this rule is not fair. I think there's a lot that we
20 pointed out here in the hearings that we have said that we
21 verified that are not in the rule, not in the rule, not in
22 the rule. Things have been stripped out of the rule. There
23 is protections that are being diminished. Miners'

1 participation marginally, only by policy, has seen some
2 improvements, and those are not guaranteed; only by the Mine
3 Act that's been in effect for years.

4 What we said at Morgantown is this proposal is
5 fatally flawed. It needs to be sent back. Go back to the
6 drawing board and come out with another one that really
7 reflects the needs of the nation's miners, reflects the
8 findings of the advisory committee because our lawyers in
9 our department and others have taken a look at this and come
10 to the conclusion the kind of reforms that need to take
11 place to fix those things that follow the recommendations of
12 the advisory committee, that institute the lawsuit issues,
13 to respond to the needs of miners, cannot be done
14 legitimately in this rule making. You're too far off the
15 path to go back and mandate it.

16 This is a proposal that band-aids won't work. It
17 needs to go to the emergency room. It needs to come back
18 out of there with the whole body that really addresses the
19 issues that face the nation's miners.

20 As far as trying to do something here, what this
21 proposal represents is give a little bit to the miners and
22 give some to the operators here. We are for reforming the
23 program in the best interest of the miners in this country;

1 nothing short of that.

2 We fully expect the government to at least once in
3 its long string of activity to take the concerns and the
4 needs of miners to heart by thinking for a while how this
5 affects MSHA and think for a while how this really affects
6 miners and what miners really said they want and need and
7 come back out with a proposal that reflects the changes that
8 are necessary.

9 Thank you very much.

10 MR. NICHOLS: Thank you, Joe.

11 (Applause.)

12 MR. NICHOLS: Our next presenter will be Tom
13 Wilson, United Mine Workers of America.

14 MR. WILSON: I'm Tom Wilson, T-O-M, W-I-L-S-O-N.
15 I work for the United Mine Workers of America International
16 Union.

17 It was suggested yesterday to me that probably a
18 good thing for me to do today would be cover the -- give an
19 overview and cover the history of what got us here today.

20 As I was sitting in my room last night at
21 2:00 a.m., I got so frustrated with that approach that I
22 decided just go back and explain in my view what's occurred
23 since July 7.

1 Joe Main just mentioned the complexity of these
2 rules. That's an understatement. On July 7, I received a
3 phone call and was asked to get my hands on the proposals
4 that MSHA had just released by the end of the day, while I'm
5 to start reviewing those proposals over the weekend and to
6 give an opinion of them on the following Monday, on July 10.

7 Right here in my hands is what was on the Internet
8 on July 7 that MSHA had released that morning. I started
9 reading that. By Monday morning, by no way, shape or form
10 was I completed reviewing it, but I had formed an opinion
11 that somewhere along the line MSHA obviously didn't look at
12 the record and didn't listen to the testimony.

13 Between July 7 and the 10th, I reviewed the
14 package. I shared my opinion on July 10, and I immediately
15 ordered this material, which was the background of what
16 should have got us a proposed rule. In here is the task
17 group report done in 1992, and in the preamble, which I had
18 read over the weekend, MSHA mentions the task group report.
19 They mention their findings, or at least in part, and they
20 state, "The effort to implement these changes was suspended
21 pending the recommendations of the Advisory Committee on the
22 Elimination of Pneumoconiosis Among Coal Mine Workers, which
23 was convened in 1996."

1 There's another way of saying that. There's a Tom
2 Wilson way of saying that. From 1992 to 1996 nothing was
3 done, and we formed another committee and we looked at it
4 again.

5 Also in what I requested on the 10th was NIOSH's
6 document, Occupational Exposure to Respirable Coal Mine
7 Dust: Criteria for a Recommended Standard. I believe that
8 was done around 1995. I could be wrong on that.

9 Then, in 1996, the advisory committee report.
10 Now, the UMWA had Joe Main and Dr. Weiss as members of the
11 advisory committee. Short of them, I probably attended more
12 advisory committee meetings and worked in conjunction with
13 Joe and Jim throughout those hearings, and I guess it was
14 because of that I got the phone call on July 7 asking me to
15 take a look and form an opinion.

16 Also in the material I ordered on July 10 was the
17 UMWA's lawsuit against MSHA. Now, that was filed early
18 2000. Another four years, just like the task group report,
19 had gone by, and there had been no movement.

20 Even though I had formed an early opinion on
21 July 10, between July 10 and July 17 I continued to review
22 Packages 1 and 2, and this was continuously during that
23 process. The more I reviewed, the more frustrated I got;

1 the more need I felt for going even deeper into the record.

2 I remember back there in the advisory committee
3 meetings observing something and having a thought. Whether
4 right or wrong, the thought entered my mind. I see top MSHA
5 officials pop in, maybe speak for a few minutes and pop out
6 of that process. The thought entered my mind at that time
7 and again this week what possible chance was there to
8 understand the problems and find a solution by just popping
9 in and popping out?

10 I assume they had read the report and the
11 transcripts of what was said at those meetings. I'm sitting
12 here today. I don't believe it because on July 18 I started
13 reviewing the transcripts of the advisory committee
14 hearings, and just like the process of starting and trying
15 to absorb everything in the July 7 document, which I'll be
16 very honest. To this date I have not accomplished reading
17 and absorbing all of this information. To this date, I have
18 not accomplished reading and absorbing all this information,
19 and by no means did I accomplish reading word for word the
20 transcripts.

21 I got so frustrated with this process that between
22 July 18 and 31, day after day, I called my local unions and
23 asked them to come and assist in reviewing these transcripts

1 and had as many as three per day volunteers assisting me
2 going through the transcripts. Even with that team, we
3 didn't make a dent in it.

4 I remember getting frustrated, and along about
5 that time I called MSHA-Arlington thinking that possibly
6 they had a shortcut to what I was seeking to find in these
7 documents. Possibly they had an index by topic of where it
8 was found in those transcripts. I was assured no such index
9 existed at MSHA.

10 Well, by this time we're at the end of July.
11 August 1 through August 9 I, to the best of my ability,
12 myself and the safety committees and miners' reps, started
13 preparing for today's hearing while continuing to do this
14 review.

15 The history on this subject, the record on this
16 subject, and this is just the tip of the iceberg, and
17 everybody on this panel knows this. There hasn't been a
18 decade gone by that miners haven't come to the mike and
19 testified, that a record hasn't been made, and for a big
20 part that record is pretty much consistent.

21 I stopped at the office yesterday morning. You
22 know, one great thing is that we get to come to these public
23 hearings and state how we feel and why we feel that way. I

1 picked up a bulletin yesterday morning released by MSHA on
2 best practices on mine fires. Whether the thought is right
3 or wrong, it's a thought that Tom Wilson had that I'm
4 surprised we're even having public hearings on dust.
5 Instead, it wouldn't surprise me just getting a memo on
6 MSHA's best practices on dust.

7 I view MSHA. There's been a change in my heart
8 and in my mind over the years. Back in 1996, as I was
9 attending those advisory committee meetings, I believe that
10 I still felt and believed that MSHA was an agency that was
11 after the best interests of the miners, that at that time
12 they was going to take the advisory committee report, and
13 they was going to do what was right.

14 Today, Tom Wilson is of the opinion that MSHA is
15 an agency that avoids enforcement and doesn't always look at
16 what's in the best interests of the miners. I believe some
17 of the proposals in this rule speak specifically to that,
18 and I would like to go into that in a minute.

19 Ron, as you spoke I started making a few notes.
20 Your diagram showed -- in fact, the one on the screen now --
21 a proposed approach. Now, I believe what you're going to
22 hear today, and I don't think I disagree that that's MSHA
23 proposed approach. That lays it out, but it's what's not up

1 on that screen. It's what MSHA's proposal doesn't do.

2 It's the many areas that you turn a deaf ear to
3 the reports that you commissioned to have done, the
4 recommendations that came forth from those experts studying
5 the problem in detail, not just popping in and out for an
6 appearance, but studying it, giving it thoughtfulness,
7 identifying the problems and searching for a solution.
8 Those are the things that I view that's missing from this
9 proposal. It's the pages and pages of transcripts of
10 testimony, of discussions and intent between panel members
11 that's missing from today's proposal.

12 I view that even though all that was commissioned,
13 all that was done and all that was finalized, MSHA still
14 went of on a path of their own saying disregard what our
15 past group has said. Disregard what our advisory committee
16 said. We've got a better solution. I believe with all my
17 heart that you're wrong; that your solution will not solve
18 the problems identified by the miners and discussed by the
19 panels and the committees over the years.

20 Ron, your demonstration pointed out effectiveness
21 of plans; that 60 percent of the average production is
22 currently required, that under the proposal higher than
23 average production. I personally believe that's a play on

1 words. The question must then be asked how much higher
2 because I know, and I believe everybody on this panel knows,
3 that it's nowhere close to the percentage suggested by the
4 advisory committee.

5 In my frustrations last night at 2:00 a.m., I
6 decided just to go back to the basics. By no means have I
7 read enough or am I smart enough to talk a great deal about
8 each and every one of these recommendations, but I am going
9 to touch on some, and I'm going to go down the list. It's
10 Section 6, Statement of Committee Recommendations, found in
11 the advisory committee report.

12 Recommendation No. 1. MSHA should consider
13 lowering the level of allowable exposure to coal mine dust.
14 Any reduction in the level should include a phase in period
15 to allow allocation of sufficient resources to a compliant
16 effort. In the interim, the operators, MSHA and miners
17 should develop a comprehensive program to assure compliance
18 with the current permissible exposure level. This effort
19 should include at least targeted compliance efforts, sharing
20 of documented exposure for reduction approaches, e.g.,
21 increased water sprays, scrubbers on continuous miners, dust
22 control plan parameters and increased good faith effort
23 consideration in enforcement actions.

1 When you read 72.12, it puts miners working
2 downwind of the DO, which are required to wear PAPBs, at two
3 times the verification limit. I believe that's four
4 milligrams. MSHA should consider lowering the level of
5 allowable exposure to coal mine dust. I don't know how we
6 get from that to miners work working downwind in four
7 milligrams.

8 MSHA makes adjustments to the PELs to account for
9 measurements of uncertainty. I hear MSHA's reasoning for
10 that, but again from my perspective it's going the opposite
11 direction of the recommendation. I believe both of those
12 are just examples of where MSHA has turned a deaf ear to
13 what's in the records.

14 Recommendation No. 4. Environmental control
15 measures should continue to be the primary means of
16 maintaining respirable dust levels in the mine atmosphere in
17 the active workings in compliance. Respiratory protective
18 equipment should not replace these control measures, but
19 should continue to be provided to miners until environmental
20 controls are implemented that are capable of maintaining the
21 respirable dust levels in compliance.

22 Administrative controls should only be utilized in
23 situations similar to respiratory controls as interim

1 control measures while environmental controls are being
2 installed. Again, 72.12 allows use of PAPRs to supplement
3 engineering controls. 72.14 uses language like all feasible
4 engineering controls.

5 I know I've heard about this panel of experts
6 that's going to be assisting you, Marvin, in making that
7 decision on when that's approved, but for the life of me I'm
8 going to say it like it is. I have absolutely no faith that
9 that panel of experts is going to make the right decision.

10 I come from Alabama. I know we have the most
11 grindability coal in the nation, the highest air velocities,
12 and you all know where our long walls was and you know where
13 are long walls are at today. I've seen teams of management
14 and labor go overseas to the manufacturers of long walls and
15 implement engineering controls that Tom Wilson never thought
16 of and I have no assurance that the panel of experts will
17 think of that not only reduce dust levels on their long
18 walls, but allowed them to operate those long walls at a
19 reduced standard of one milligram and be in compliance.

20 I've seen other long walls where a few years back,
21 and you all know I was screaming. I was pushing every
22 button I could push to turn things around. Long walls that
23 had eight milligrams on them. These are long walls that are

1 producing the highest grindability coal in the nation under
2 the highest air velocities. It was not uncommon to have one
3 milligram coming in at the headgate and eight milligrams
4 leaving at the tailgate.

5 We was all called into a room and gave an
6 ultimatum. Either give us airstream helmets or we're going
7 to shut these long walls down. You know what the UMWA did.
8 There's no airstream helmets introduced, and those dust
9 levels, because of the engineering controls that came down,
10 engineering controls that MSHA top personnel traveled to
11 Alabama to see.

12 Now, in my mind I just gave you some examples of
13 the worst case scenarios, and because of the engineering
14 controls and a lot of hard effort by everybody those dust
15 levels came down. I believe in this case MSHA is trying to
16 take the easy way out. They know it can be done. They've
17 seen it done. They know the advisory committee recommended
18 against airstream helmets replacing engineering controls,
19 but under this proposed rule we're saying there's going to
20 be occasions where the administrator and his panel of
21 experts need to go the opposite direction with this. I
22 strongly disagree.

23 72.14, like I mentioned, uses language like all

1 feasible engineering controls. What are all these feasible
2 engineering controls? What the hell is feasible? I think
3 you know sitting here today the argument that's going to be
4 presented as to what is feasible and what's not. I've heard
5 it for years.

6 72.14 also states continue to look for
7 improvements that you can make. I've heard those arguments
8 for years. We've looked. That scrubber is too big, or that
9 scrubber is too small, when the bottom line was they just
10 didn't want to install a scrubber. It also uses language
11 like implement feasible solutions. With all that said, I
12 have no confidence that this system is going to turn us any
13 direction but backwards.

14 Recommendation No. 6. During this verification
15 visit, miners and their representatives should have the same
16 paid 103(f) walk around rights as they do under MSHA
17 inspections. I stated earlier by no means did I finish
18 reading those transcripts word for word, but I did get far
19 enough to review the total conversation between committee
20 members on notified visits.

21 The problem was perceived and detected early back
22 in 1996 by the operators that once MSHA notifies of a visit
23 it cannot be considered an inspection, and, therefore, they

1 was not obligated to pay 103(f) walk around rights. It's in
2 the record. The complete discussion is in the record, and
3 after that complete discussion the advisory committee comes
4 out with Recommendation No. 6, the advisory committee that
5 you formed, you appointed and selected to study the problem
6 and come up with a solution.

7 Now, if there's no other example that leads you to
8 how did Tom Wilson form his opinion that MSHA turned a deaf
9 ear to those parts they didn't like or didn't support, I
10 think that one should point pretty clear to it.

11 Recommendation No. 8. MSHA should complete
12 research in consultation with outer agencies such as NIOSH
13 to study the relation between -- I have to apologize; the
14 pages are starting to blur -- indices collected from
15 continuous monitors and the traditional methods of assessing
16 exposure to respirable dust when these different methods are
17 applied to the functions of hazards surveillance, as well as
18 developing other potential uses of continuous monitoring
19 data; for example, compliance activity.

20 Where is it? One brief little sentence? The
21 advisory committee clearly recognized that part of the
22 solution to the total pie approach of fixing the problem was
23 continuous monitoring. I can't say that my opinion

1 represents all the miners here, but my opinion is MSHA, with
2 their one, brief little statement about continuous
3 monitoring, all but put the knife in the back of continuous
4 monitoring.

5 It continues on. Once the technology for
6 continuous dust monitors has been verified, these monitors
7 should be broadly applied in conjunction with other sampling
8 methods for surveillance and determination of dust control
9 at all MMUs and other locations at high risk of elevated
10 dust exposure. Once verified as reliable, as in (1) above,
11 MSHA should use continuous monitored data for assessing
12 operator compliance efforts and controlling miner exposure
13 and should continue use of continuous monitored data
14 directly in compliance.

15 MSHA should take whatever action possible to
16 expedite the development and field testing of a continuous
17 personal monitor to serve a variety of purposes, among them
18 identifying sources and levels of exposure to respirable
19 dust and, as appropriate, for compliance. Again, I feel
20 MSHA has failed the coal miner. Machine mounted continuous
21 monitors is just briefly mentioned in this package, and we
22 all know that the personal wearable continuous monitor that
23 MSHA went after to design is not worth refinement.

1 Recommendation No. 15. MSHA reliance on dust
2 sampling for compliance should be based on the appropriate
3 balance of personal, occupational and environmental
4 sampling. Some of the comments here will also apply in
5 Recommendation No. 16. I don't believe MSHA went after that
6 proper balance as Recommendation No. 15 speaks to.

7 I believe MSHA looked at, and the term was used to
8 me last week and I immediately wrote it down because it
9 struck a chord with me as being the truth. I believe MSHA
10 looked at the sampling burden on themselves; not on the
11 health, what was the best for the health of the miners, but
12 again on the sampling burden.

13 When MSHA currently does bimonthlies, what
14 percentage of production do they require for a sample to be
15 valid? I believe it's 60 percent.

16 MR. SCHELL: Of the average.

17 MR. WILSON: Of the average. And under the rules
18 what would it be?

19 MR. SCHELL: It would be roughly 70, the 70th
20 percentile, so it would be significantly above the average.
21 Rather than 60 percent of the average, it would be
22 significantly above.

23 MALE VOICE: Use the mike, please.

1 MR. SCHELL: I'm sorry. I'm sorry. Tom, I'm
2 sorry. You're asking about compliance sampling. Compliance
3 sampling would still be what it is today, which is 60
4 percent of the average.

5 MR. WILSON: The same.

6 MR. SCHELL: What I was referring to, and this is
7 a bad microphone. Are you hearing anything at all back
8 there?

9 What I was referring to was above the average, the
10 verification. Tom, that is an improvement over what the
11 operators do now. As you know, they use 50 percent.

12 MR. WILSON: Ron, as you know, it's far under what
13 was recommended by the advisory committee.

14 MR. SCHELL: Tom, I honestly don't remember what
15 the advisory committee recommended for compliance sampling.
16 Clearly they recommended in verification sampling that it
17 should be near the upper limits of production, and that's
18 why upon verification we went significantly above the
19 average.

20 MR. WILSON: You use words like significantly.
21 70.2(a)(8) defines verification production levels, VPL, as
22 the tenth high production level recorded in the most recent
23 30 production shifts. I've heard numbers that that

1 calculates out to 67 percent. You just used 70 percent. I
2 again believe that it's far less than what the advisory
3 committee spoke to, and I believe 16 gets into it even
4 further.

5 MSHA should adjust the PELs to account for
6 extended work weeks. MSHA should develop a formal targeting
7 mechanism for more frequent sampling of mining sections,
8 mining units and operators found to have a history of non-
9 compliance with the respirable dust standards or sampling
10 procedures. MSHA should explore innovative ways to enhance
11 its presence in mines for compliance sampling.

12 (b), The committee believes that any MSHA resource
13 constraints should be overcome by mine operator support for
14 MSHA compliance sampling. The committee recommends that to
15 the degree that MSHA's resources cannot serve the objective
16 identified, resource constraints should be overcome by mine
17 operator funding for such incremental MSHA compliance
18 sampling.

19 16(c), The committee considers it a high priority
20 that MSHA take full responsibility for all compliance
21 sampling at a level which assures representative samples of
22 respirable dust exposure under usual conditions of work. In
23 this regard, MSHA should explore all possible means to

1 secure adequate resources to achieve this end without
2 adverse impact on the remainder of the agency's resources
3 and responsibilities.

4 Compliance sampling should be carried out at a
5 number and frequency at least at the level currently
6 required of the operators and MSHA. The miners'
7 representatives would be afforded the opportunity to
8 participate in these inspection activities as provided in
9 Section 103(f) of the Mine Act. Operator compliance
10 sampling in the interim should continue with substantial
11 improvements to increase credibility of the program based on
12 the committee's recommendation.

13 (f), MSHA should increase the number of samples
14 collected by the agency to determine compliance with
15 respirable dust standards. MSHA should place major emphasis
16 on the use of personal monitoring for determining compliance
17 with PELs. However, MSHA should continue the practice of
18 designated occupational sampling for determining non-
19 compliance.

20 (e), MSHA should make no upward adjustments to the
21 PELs to account for measurement uncertainty.

22 (g), Mine operators should continue to measure
23 exposure to respirable dust for DOs, DWPs and DA compliance

1 sampling as provided in 30 CFR 71 and 90. Additionally,
2 mine operators should sample as part of plan verification
3 operator sampling.

4 (i), Samples taken to determine non-compliance
5 should be taken when production is sufficiently close to the
6 normal production shift. The production level should be 90
7 percent of the average production of the last 30 production
8 shifts, and MSHA should require the mine operator to
9 maintain the appropriate records.

10 (j), MSHA should adjust the PELs to account for
11 extended work shifts. Again, when you look at that
12 language, you look at the transcript that supports that
13 language, I do not believe your rule, proposed rule, follows
14 those recommendations.

15 Recommendation 17. Continuous monitors for dust
16 control parameters should be utilized to evaluate and assess
17 the quality of dust control measure as part of mine
18 respirable dust control plans.

19 And 19, Recommendation No. 19. Again, as I
20 mentioned earlier, if there's any doubt how Tom Wilson
21 formed his opinion that MSHA went off on their own path by
22 trying to address parts of the problem and failed to look at
23 the whole problem and the whole solution, this is one of the

1 clearest examples that I can draw to.

2 In an earlier recommendation we already heard the
3 committee's recommendation on 103(f) walk arounds during
4 plan verifications. This is Recommendation No. 19(a).
5 Miners' participation in the interim operator dust sampling
6 program should be increased to provide assurances that a
7 credible and effective dust sampling program is in place.

8 To that end, miners at each mine should select
9 designated representatives who are employed at that mine for
10 compliance sampling. Miners designated as representatives
11 of the miners should be afforded the opportunity to
12 participate in all aspects of respirable dust sampling for
13 compliance at the mine. That participation would include
14 protection against loss of pay as provided under Section
15 103(f) of the federal Mine Act.

16 19(b), Miners' representatives should have a right
17 to participate in dust sampling activities that would be
18 carried out by the employer for verification of dust control
19 plans at no loss of pay. Miners' representatives should
20 also have a right to participate in any activities involving
21 any handling of continuous dust monitoring devices or the
22 extraction of data from continuous dust monitoring devices
23 without loss of pay.

1 19(c), Miners' representatives should receive
2 training and certification to conduct respirable dust
3 sampling paid by the employer. Miners' representatives
4 should be afforded the opportunity without loss of pay from
5 the mine operator to participate in the training of the
6 miners.

7 As stated earlier, if you review the transcripts
8 of the advisory committee, the discussion between the
9 committee members, recognize that they foreseen the problem
10 back in 1996. It was addressed by the operators then. The
11 proposal simply doesn't address it. MSHA has skirted the
12 issues, again I believe took an easy route and failed to
13 look at the whole problem and the whole solution.

14 Today you're going to hear probably in excess of
15 60 miners that I'm sure will give their examples and lay the
16 case out far better than I can, but I echo the message that
17 Joe stated earlier. You have failed to follow the
18 committee's recommendations. The proposals are flawed. Go
19 back to the drawing board and fix these proposed rules.

20 Thank you.

21 (Applause.)

22 MR. SCHELL: Thanks, Tom. Just a couple comments.

23 Tom, I would like to just clarify one point. I'm

1 not trying to be argumentative here. I'm trying to explain
2 why we did what we did so you'll understand. You still
3 certainly have a right to object to it.

4 One of the concerns I think that we all agree with
5 is the impact that averaging multiple samples has on the
6 protection of miners. You can go out, and you can sample
7 and take five samples, and you can get a 3.5, a 4.1, and
8 then you come in with 1.0 or .8 or whatever else. You add
9 them all up and you divide them, and if they come below 2.1
10 under the current system everybody is okay.

11 They're not okay. One of those miners is exposed
12 to three milligrams. We've done actual cases where miners
13 have been exposed to four milligrams of dust, and when you
14 average it we say the miner is okay because you dilute the
15 high exposures with the low exposures.

16 What we're talking about is going to single
17 samples, so no more do you get the 4.5s, the 3.5s. The
18 reason that we have proposed going to citing at 2.33 is a
19 legal reason, and that reason simply is that the Secretary
20 of Labor bears the burden legally if there's a contest of
21 proving that there was a violation.

22 I'm not a mathematician, but if we cite 2.0 or
23 2.1, and I think Dr. Weeks will probably address this.

1 There's about a 50/50 chance that there was a violation,
2 there was a violation of the standard or there wasn't. We
3 have problems sustaining before a Judge that there was a
4 violation of 2.0, a 50/50 chance. If we cite at 2.33, we
5 have or we can statistically prove a very high confidence
6 level that that miner was overexposed.

7 The point I want to make is the great advantage to
8 the miner in citing on single samples. We don't have that
9 many between the range of 2.1 and 2.33. The great advantage
10 to the miner again is using single sampling. I can
11 appreciate you can be concerned that we're not citing at
12 2.0, I wanted you to understand that we're doing it for
13 legal reasons. Again, the great advantage to the miner is
14 using single sample measurements and looking at every sample
15 and not allowing them to be averaged.

16 MR. NICHOLS: Okay. Daryl Dewberry will be up
17 next, but let's break until 10:30. Daryl, if you could be
18 back and ready to go at 10:30.

19 (Whereupon, a short recess was taken.)

20 MR. NICHOLS: Okay, Daryl. Go ahead.

21 MR. DEWBERRY: Thank you, sir. My name is Daryl
22 Dewberry, D-A-R-Y-L, D-E-W-B-E-R-R-Y. Before I make my
23 presentation, I think that I need to get Joe to come back to

1 the mike to straighten out something or rebut something that
2 Ron had stated. At this time, I would yield to Joe Main.

3 MR. MAIN: Thank you, Daryl.

4 As we go through this, I'm not going to be
5 interrupting. I'm going to try to wait until the end, but I
6 think this is such an important issue, Ron, that people need
7 to understand what's really going here with the dust
8 exposure levels.

9 I understand the position MSHA has taken with
10 regard to they jacked up to two milligrams and 2.23 for the
11 legal issue. That may be all well and good if you want to
12 wed yourself to saying that you want to use two as a base.

13 I'd like to introduce into the record, and I think
14 there's enough to go around, a document. I want to
15 introduce into the record a document that was published in
16 the Federal Register on April 24, 2000, by MSHA. I don't
17 want to add a lot more confusion to this whole debate over
18 dust levels. Not that I'm going to; I think the MSHA
19 already has.

20 What it is is a notice of potential rule making by
21 MSHA, and what it says is that the 1996 Secretary of Labor's
22 Advisory Committee on the Elimination of Pneumoconiosis
23 Amongst Coal Miners recommended that we consider lowering

1 the dust permissible exposure limit, PEL.

2 In 1995, the National Institute for Occupation
3 Safety and Health issued a criteria document in which they
4 recommended that the respirable dust level or dust PEL be
5 cut in half. We're considering rule making to lower the
6 dust PEL because miners continue to be at risk of developing
7 dust condition occupation lung disease.

8 Now, for the record I would like to say that on
9 April 24, 2000, less than three months before MSHA issued
10 this proposed rule, they put out an announcement that they
11 were considering cutting the PEL in half, which means two
12 would be one as I read it, and that was consistent with what
13 the NIOSH criteria document is.

14 Now we sit here, and we have a proposal on the
15 heels of this announcement saying we're raising up the PELs
16 to actually be an exposure level of 2.3 and 1.6, and a lot
17 of operators will go from two milligrams to four milligrams.

18 I'll tell you, if you guys haven't left me totally
19 confused as to where the agency is at. I mean, I don't know
20 what any miner or what any of us should think, but I think
21 the agency on one hand issuing a public notice saying we're
22 considering going to one milligram and then having a
23 proposal that increases these across the board is

1 outrageous. It's outrageous for government policy to do
2 that.

3 Secondly, with regard to the 2.3, if MSHA wanted
4 to have a two milligram standard they could have followed
5 the recommendation of the advisory committee and lowered the
6 dust standard. They could have followed their own notice
7 and lowered the darn thing down to where they ended up with
8 the two milligram standard if they chose to do that.

9 The agency is thinking -- I'm not sure exactly
10 what the heck the agency is thinking, to be honest with you,
11 given the fact that this proposal comes out in April and we
12 have one in July that goes completely in a different
13 direction. I understand the legal argument there, but I
14 don't think it's fair in the context of what has been placed
15 on the record, the demands for lowering the standard, the
16 agency's own position as noticed in April, 2000, of
17 considering cutting the standard in half.

18 I don't think I'm the only one that's totally
19 confused in this room about where MSHA is at on dust
20 standards in this country.

21 (Applause.)

22 MR. NICHOLS: Thanks, Jim.

23 MR. MAIN: Okay.

1 MR. DEWBERRY: As I stated earlier, my name is
2 Daryl Dewberry. I am the international executive board
3 member for District 20, which encompasses Alabama,
4 Mississippi, Georgia, Florida, South Carolina, North
5 Carolina, Tennessee, Virginia and eastern Kentucky. With
6 that said, I welcome each and every one of you to District
7 20, United Mine Workers of America.

8 I'll give you a little background about myself.
9 I'm going on my third term as international executive board
10 member. I've been in that position since 1993. Prior to
11 that I was a District 20 executive board member from 1985 to
12 1993.

13 My duties are to represent the miners in all
14 phases of their problems, such as arbitration, mediation,
15 litigation and resolution of their problems and negotiate
16 their collective bargaining agreements. Prior to that I was
17 a local union president, 2397. I served as the chair of the
18 safety committee, served on the mine committee, compact
19 committee and organizing committee.

20 My mining experience is I went to work at North
21 River Energy in 1975, which was Republic Steel then -- it's
22 P&M Coal Company now -- and then on to underground
23 development sinking the shafts at Jim Walter Resources, a

1 hard rock miner. From there I went to Mulville Coal
2 Company, from there to Jim Walter Resources No. 7 Mine. I
3 left No. 7 Mine and went to work for the district as a
4 district rep.

5 I've held the classifications of a miner operator.
6 Mostly that's what I was in my tenure employment there.
7 I've been a fireball, shot fireman, first class welder,
8 pumper. Prior to that I was a journeyman ironworker. I'm
9 registered with the State of Alabama as a certified
10 competent mine foreman since October of 1981. My
11 certificate number is 5284.

12 I also served on the state board of examiners,
13 which was appointed by the Governor of the State of Alabama.
14 That's a state mining board of examiners. I'm also
15 certified with MSHA in dust sampling.

16 A few weeks ago, as a matter of fact on the
17 morning of July 7, I started my day like most mornings. I
18 put on a pot of coffee, and I went out to get the newspaper.
19 I opened it up, and right on the very front page -- let me
20 get the right one here -- it says Rules Aimed At Protecting
21 Coal Miners. It goes on to state, "After a lawsuit for
22 United Mine Workers of America, federal officials have
23 proposed new rules to keep miners from developing black lung

1 disease."

2 I instantly started wondering and thinking is this
3 true? I read on into the article and saw quotes by Davitt
4 McAteer, the Assistant Secretary of Labor for Mine Health
5 and Safety. He was singing the praises of the proposal. I
6 saw quotes by Bruce Watson, the vice-president of health and
7 safety for the National Mining Association that was packaged
8 in that article in a way that appeared to be endorsed and a
9 sanction of the United Mine Workers of America.

10 But guess what I didn't find? I didn't find in
11 that article any quotes from my great president, Cecil E.
12 Roberts. Even in the early morning I found it very odd that
13 this front page article, which gave the appearance of a UMWA
14 picture, that it had quotes by everyone but the plaintiffs
15 in that original lawsuit, and that was United Mine Workers
16 of America.

17 I really started wondering was Davitt McAteer and
18 MSHA trying to mislead the public by this release? One
19 thing that really seemed odd to me was what method, what
20 miracle, had they come up with to eliminate black lung
21 disease in the mining industry? I wanted to see this.

22 My great union has been good to me. I've been to
23 the Georgia Main Center for Labor Studies. I've arbitrated

1 over 400 cases in my tenure of business, and I couldn't
2 believe that we had come up with some type of miracle that
3 would eliminate black lung disease in the coal industry.

4 Well, I couldn't wait to get my hands on the
5 proposal. I contacted Tom Wilson immediately. He is a
6 staff employee in District 20 over health and safety. I
7 asked him what about it? He said I don't know. I haven't
8 got my hands on it yet. I said I want to see this miracle.

9 I accompanied Tom Wilson that day. He got some
10 information over the Internet. We went to the district
11 office, the MSHA district office, and obtained the
12 proposals. I immediately went back, had my secretary get me
13 a copy right off the top of those proposals, those new
14 rules, and I immediately started reading and reviewing.

15 I've seen some ambiguous rules before in my life,
16 and I call myself at least an average educated man, but the
17 ambiguous language and, in my opinion, in some cases
18 deceptive language, the discretionary proposals of some of
19 the rules went over my head.

20 At that point, and even in your own quotes of the
21 proposal it refers back to the formulas. I know that we've
22 got John, who's a mathematician, back there. I've also got
23 a cousin that's a CPA. Two and two in my book equals four.

1 It always has, but some of the math we can't even get
2 experts to agree on on the formulas. I'm speaking of the
3 quartz and sampling.

4 I went back to the proposed rules or the advisory
5 committee's proposed rules, and I reviewed those 20 rules.
6 They're simple. They're unambiguous. They have a clear
7 definition of what kind of conclusion that MSHA should draw
8 to make a rule. Your rules that are proposed rules that you
9 have addressed in no way, shape, form or fashion come close.
10 They do in some case. The single sample, and we appreciate
11 that. That's long overdue. However, I think we missed the
12 benchmark as far as the hours worked.

13 April 1 is a holiday for the United Mine Workers.
14 It's supposed to be the eight hour work day. You can ask
15 any active member in this room. We don't have an eight hour
16 work day. Most people change out at the faces. They call
17 it a hot seat swap out, and they work in general ten hours a
18 day. Not just those face people, but the outby people, too,
19 that are on these belt headers, which are going to be
20 samples one time per year. That is absurd.

21 After reading the proposals, and I earlier stated
22 that I was proud to welcome everybody to District 20, but
23 I'm absolutely appalled at the rules or the proposed rules

1 that we're asked to be considered at this hearing today
2 unless I'm wrong in reading, and I'm not because I've got
3 the opinions of every safety committee in my district, the
4 people that I rely on for knowledge.

5 As Tom stated, we have worked those people to
6 death since these rules came out. They spent countless
7 hours reading and re-reading. I guess it's like anything
8 else. You'll come up with a different conclusion after you
9 read it again and again. However, it comes back to the same
10 bases. The point of the advisory commission on their 20
11 rules that they recommended were missed by MSHA.

12 As far as the rules and the advisory committee's
13 recommendation, as I stated, the ambiguous discretionary
14 rules that leave it up to and put the burden really on an
15 MSHA inspector. Let me say that I have personal friends
16 that are MSHA inspectors and glad to see some of them.
17 However, I don't want to put this burden on them. They need
18 it in black and white rather than to make a judgement call,
19 and they do in most cases have to do that, but as far as
20 leaving the discretion to one individual MSHA inspector as
21 to whether or not to write a citation or what, I can't
22 understand putting this burden on him.

23 I think that the law should be clear. There's too

1 much room for ambiguous language for problems to be when we
2 wind up going with an ALJ. You all know. I understand your
3 2.33. If it's two percent, leave it at two percent. As a
4 matter of fact, I've done a lot of reviewing on this thing.
5 I went back to the basis for this right here.

6 I compared Part 90, and that's one of my -- let me
7 say this. That's a pet peeve with me because we've lost
8 over 18,000 people to mine related respiratory diseases over
9 the years. I've got a personal friend that hired in at Jim
10 Walters 7, Sammy Walter. He is my age, 49, or he would have
11 been my age. However, he passed away about three years ago
12 from this disease.

13 Another young man named Scott Capell, who was
14 removed from the coal mines at Jim Walter No. 7 Mine at 33
15 years of age because he had black lung. I guess that's why
16 Tom used the word frustrated. I use the word angry, mad,
17 because I've seen brothers fall to this disease.

18 Don Hood, a personal friend of mine, can't walk
19 across this room. He's contracted it. He didn't think a
20 thing about it at the time working downwind or being
21 involved or around it. It didn't have an immediate impact
22 on him other than choking to death right then. Now he's
23 choking to death in fresh air. He walks around with an

1 oxygen bottle behind him.

2 The dust is still killing people today, and the
3 miracle that MSHA has proposed in my opinion won't do it.
4 There are some advances such as the single shift sample, but
5 480 minutes is not what these people work. It should be
6 tied to their work schedule from portal to portal. If the
7 equipment won't do it, we have the technology and the
8 ability to change it, to monitor the environment that that
9 person works in.

10 If discretion is going to be used, use the
11 discretion of when he gets on the man bus and gets to the
12 work section. Start it then. In general, we've probably
13 got about 30 minutes to the face, so you're talking about an
14 hour off of ten, so instead of 480 minutes they need to be
15 at least monitored nine hours, so you would have to adopt
16 that employee working on the face, his specific time that
17 he's worked.

18 I'm sorry, but the MSHA inspector needs to stay
19 down there. Six samples a year? All we're doing is giving
20 them an average opportunity of missing the boat. All
21 they've got to be right is six times out of the year. The
22 rest of the time they can be wrong unless you catch them,
23 and then we'll go back to an abatement situation.

1 Let's get back to Part 90 miner sampling. Nowhere
2 in this, and I would take you to page 32 through 35 of the
3 '77 Act. This is promulgated -- I mean, this is the Act
4 itself as enacted by the Congress, Senators and House of
5 Representatives and signed into law. It specifically deals
6 with the standards.

7 I don't see anywhere in here, and I've read. I
8 know that in the beginning we allowed up to at some places
9 never to exceed 4.5 milligrams. It goes on to state,
10 however, at no time would this be extended let's say past 18
11 months, and it goes on with the waiver. It even addresses
12 on page 34 effective three years after the date of this Act
13 we would go at two, not 2.33, and I understand you're trying
14 to give yourself a little buffer there because these
15 operators are going to litigate it. They're going to try to
16 challenge your ability to prove that they've got two
17 milligrams.

18 I think you've got a mandate by the Congress. I
19 think that it's not discretionary on your part. We didn't
20 ask you to legislate the law. We didn't ask you to be
21 legislators. We asked you to enforce what Congress has
22 guaranteed us as citizens of this great country.

23 I would also go on to page 36. I see the brother

1 back there with the airstream helmet on, and I know that
2 he'll get into some testimony on that, but I would refer you
3 to page 36. It says use of respirators shall not be
4 substituted for environmental control measures in the active
5 workings. Each operator shall maintain a supply of
6 respirator equipment adequate to deal with the occurrence of
7 the concentrations of respirable dust in the mine atmosphere
8 in excess of the levels required to be maintained under this
9 Act.

10 Gentlemen, I would ask you all to consider the
11 proposals and the recommendations of the committee that was
12 formed. I mean, you all put this committee together. If
13 you're going to throw good money out there to get their
14 advice, and let me say that I have the utmost confidence in
15 Joe Main and Dr. Weeks both.

16 I know what Congress intended. Congress intended
17 for MSHA not to assist in coal production or the monetary
18 value of coal. It guaranteed us right on the front page the
19 protection for its most important resources. That's the
20 coal miner. I think we've missed the benchmark, even though
21 we have raised some pertinent issues such as single
22 sampling, and I appreciate that. That's been a long sought
23 after mechanism to try to curtail dust, but this won't do

1 it.

2 I would ask that this committee, this panel, go
3 back to the drawing board, go back and read and consider the
4 measures of the advisory committee. They've got some good
5 stuff in there. We have technology today. I mean, I'd say
6 20 years ago you'd take -- I'll give you an example. The
7 Jim Walter mines are over 2,000 foot deep, most of them,
8 varied from I'd say 1,800 to 2,200. They deliver somewhere
9 around 36,000,000 cubic foot of methane in a 24 hour period.
10 I had the very first ignition at Jim Walter No. 7 Mine and
11 velocities of greater than 30,000 cubic foot of air over a
12 continuous miner.

13 I've been on a long wall when it took 100,000
14 cubic foot of air off the face, and then it feels like
15 you're working in a sand storm with the dust. Again, I
16 don't know if the airstream helmets are more or less to keep
17 the dust out of your face and eyes because it pits you. It
18 feels just like somebody has a sand blasting hose blowing
19 you in the face at times.

20 What I would appreciate, and I guess what would
21 make you I guess more sympathetic, more in tune with what
22 these people have to work under, is on a normal day, and I'm
23 not asking much, go spend the entire day with these panel

1 members on that long wall face or out by one of the belt
2 headers or deal directly with one of these people that have
3 black lung.

4 Their life is already shortened. To expose them
5 to 1.26 or anything greater than one milligram and, you
6 know, the standard -- there's quartz in the Jim Walter mines
7 in the Blue Creek seam and Shell Creek. It's on the Blue
8 Creek seam in Alabama. I have personal knowledge of what's
9 taken place there, and that's why I'm -- I'm not shorting
10 any of them, Pittston or any other operations anywhere else.
11 They have similar problems, and they will address those
12 specifically, but I want you to go back to the drawing
13 board. This, what we've got right now, won't work.

14 I'd appreciate, and I guess I probably got angry
15 right out of the chute when that proposal, and I don't know
16 what I did with it, came out for doing away with black lung.
17 I don't know if that was a typo. It indicated that it was a
18 quote from MSHA. Fellows, what you all got planned will not
19 do away with black lung disease or coal related diseases as
20 far as respiratory systems are concerned.

21 Thank you.

22 MR. NICHOLS: Do you think those Alabama long
23 walls are in compliance day after day after day downwind of

1 the shear operator?

2 MR. DEWBERRY: Now, sir, but I'll say this. At
3 one time the operators screamed that they couldn't live with
4 those 60 samplings. In most cases, they beg for it now.

5 The technology is there. I don't want to steal
6 the thunder from any people, but we've got committees that
7 have worked on a collaborative effort with the operators
8 that have gotten the long wall standard to one percent, and
9 they'll elaborate on that.

10 The technology is there. When those operators are
11 required to do it, and we're talking 33 samples a year.
12 That's all they've got to dodge. You've got -- let me tell
13 you what you've done for those operators, and I know some
14 are here today. You've given them the opportunity. You've
15 lifted the burden of proof out of dust problems. They're no
16 longer going to be accountable for that. We pushed for
17 that. However, they've only got six shots a year that
18 they've got to dodge -- that's it -- instead of 33.

19 MR. NICHOLS: Let's back up there a minute. Would
20 you not agree that a good plan that has been verified to
21 work at a high production level gives a lot of people the
22 opportunity to look on a daily basis to see that compliance
23 is going to be achieved, that the mine operator, the miner,

1 the inspector, that those controls are in place on a daily
2 basis, and they've been demonstrated to work to achieve
3 compliance for the two milligram standard?

4 MR. DEWBERRY: I would agree that if we leave it
5 at two milligram standard and if there is verification that
6 they're in compliance -- not just six times per year, but on
7 a normal production day and I'd say within the parameters of
8 what the advisory committee had recommended; not 68 percent,
9 but at least, you know, 90 percent or something like that --
10 this is what these people work under is the 90 percent when
11 they're sampled there under there every day not for 480
12 minutes, but for nine, nine and a half hours, whatever their
13 work day may be.

14 Yes, sir, I think that -- and I have confidence in
15 the technology. Nobody ever dreamed that we would be able
16 to mine coal in 36,000,000 cubic foot in a 24 hour period of
17 methane, that deliberation.

18 The dust levels I've seen? I've worked in Wind
19 Gone running a continuous miner trying to allay the dust
20 when it would choke you, the thick atmospheric -- the dust
21 wasn't as bad as the Wind Gone, the wetting agent. The same
22 is true on these long walls, but there is technology there,
23 and that's what we need to hold them to the letter of the

1 law and the promise of Congress and the '77 Act and make
2 them have the controls necessary to maintain it at that
3 level.

4 I think in line with what you're saying, if we had
5 verified controls, how are you going to verify it if you
6 don't check it but six times per year? I mean, you're
7 talking bimonthly. What happens to the rest of the time?
8 Are we going to set up I guess a preliminary investigation
9 to get them in line? I don't have a problem with checking
10 them at random or whatever, but these operators know when
11 the schedules come around, especially if you've just got six
12 times. They gear up for it.

13 MR. NICHOLS: Well, bimonthly is intended to be a
14 minimum. There are other times we choose to sample.

15 MR. DEWBERRY: I understand that, and I read that,
16 but let me assure you, and you and I both know the budget
17 cuts, the money that you all have had to work with as far as
18 an agency. We'd like to see you get all the money you could
19 to continue on, but it's not there.

20 In some cases, we would like to have I know six is
21 a minimum on the point, but I think that the operators
22 should be under the gun, so to speak, you know. The
23 advisory commission had recommended continuous monitoring.

1 We monitored CO continuously. They had the technology and
2 the ability to monitor the dust, I mean, on a continuous
3 basis. That would give us a true reading of what our people
4 were exposed to.

5 I don't know if you've been at any black lung
6 hearings where somebody has contracted black lung where
7 they've already died and they've cut them open and they've
8 said yes, he had it and still fighting to get it. The
9 person is deceased, but his family, you know, they're
10 entitled to black lung. These people are dying every day
11 from it. I know. I've got some close friends, as I stated,
12 that I worked with that have passed on from this disease.

13 MR. NICHOLS: I don't disagree, but Davitt McAteer
14 has put a lot of emphasis on trying to identify black lung
15 with his pre-test x-ray program, and then a package of dust
16 rules here that we can agree to disagree on, but I can tell
17 you he's trying to get at the problem.

18 Now, with all the discussion about the four
19 milligram standard, the dust standard being raised on the
20 long wall, that's not true. I mean, we're talking about
21 some number of people working downwind where the problems
22 cannot be engineered away. If there's engineering controls
23 in place that are taking care of the problem, companies need

1 not ask for the use of airstream helmets.

2 The four milligrams is the protection factor for
3 that helmet. That's not to say that people are going to be
4 allowed to go up the standard to four milligrams. What
5 we're trying to do is identify any situation where there's
6 some protection for the miner, either engineering controls
7 or, in the small case, some consideration for these
8 airstream helmets.

9 MR. DEWBERRY: In addressing that, I could
10 understand this plea for giving that much leeway if our
11 industry was just developing. Long walls has been in the
12 mines since 1978 in Alabama. When they have to, they
13 comply. When they're put under the gun, I've seen so many
14 times these operators come up with a brilliant idea along
15 with the union to abate a violation. That's what we need to
16 do.

17 I'm not saying fine our operators out of business.
18 We want them to operate as much as anyone else. All I'm
19 saying is that we need -- we got the laws here. I mean, it's
20 clear in here to give these allowances or waivers, and it's
21 just for an 18 month period. In some cases it is extended
22 where there's certain mitigating circumstances, but I don't
23 think anybody in here, unless you go back to the law, has

1 the authority to get in conflict with what this Act is
2 proposing.

3 It guarantees -- the way I read it as a common
4 coal miner, it guarantees me that I ain't going to have to
5 work in above two milligrams. As a Part 90 miner, I won't
6 have to work above one milligram and not with any two and
7 two makes five and a half equations.

8 I know it's got allowances for quartz and it
9 addresses it under 202. The Part 90 and the Federal
10 Register addresses it also. I think that we need to go back
11 to the drawing board and take the advisory committee's
12 recommendations in place and take this Act. Maybe we need
13 to go back and read it and what its intent is and go from
14 there.

15 Let me say that I have personally contacted some
16 of the legislators in Alabama and brought this to their
17 attention. I would just ask that you do go back to the
18 drawing board and take the advisory committee's
19 recommendations and let's come up with something.

20 We appreciate what gains we did make, or I do, on
21 behalf of the members here in District 20. However, they're
22 not enough. There needs to be single shift sampling.
23 That's a blessing because, I guess, if a miner is exposed to

1 three percent on one day, don't take the five samples and
2 then say well, we've got you down to .9. You're okay. I
3 mean, that's ridiculous. If you're in that environment
4 you're in that environment, and I've never known of one day
5 where that dust has helped anybody. It's a killer every day
6 that you're in it.

7 What you need to do is go down to one of the coals
8 mines, especially one of these with a high velocity of air,
9 and get on that long wall face and hang in there all day.
10 Do you know what? You'll come out with a different feeling.
11 You'll say, number one, I don't want to put one of those
12 airstream helmets on. I want to wear me some snow goggles
13 to keep it out of my eyes and wear a bandanna around my face
14 or a respirator even upwind of the long wall.

15 Some if the best things that ever happen before we
16 starting washing these shields down. That cut down a lot of
17 dust even engineering devices to put sprays on these shears,
18 on these shields, would help tremendously. At that point, I
19 think some of these operators thought well, we can live with
20 this 060 sampling now and wanted it back, but that's a
21 different story.

22 We're here to deal with the specifics of your regs
23 and your proposals. I'll say one thing. You all put

1 together one heck of a package because I have read and read
2 and read and went back again, and I know that the majority
3 of these people went back and read it again.

4 You know, I call myself being pretty good at going
5 back and reading collective bargaining agreements because I
6 negotiate them and pick the ifs and ands and buts out of it
7 and try to get a concise meaning or write a memorandum of
8 understanding to it on exactly what the meaning is. If this
9 was a collective bargaining agreement, your proposals, we'd
10 be back writing memorandums of understanding every day
11 because the operator don't think the way I do. The operator
12 looks for ways to get around it, and I look for ways to
13 enforce it. MSHA is caught right in the middle to try to
14 please both sides.

15 I'm going to tell you. Don't put this on an MSHA
16 inspector or CMI because he'll have a heck of a task to do
17 every day. He's already got one in the first place.

18 Thank you.

19 MR. NICHOLS: Thank you, Daryl.

20 (Applause.)

21 MR. NICHOLS: The next presenter will be Bolts
22 Willis of the UMWA.

23 MR. W. WILLIS: Thank you, Mr. Chairman, for

1 having us speak at this meeting today. My name is William
2 Bolts Willis, W-I-L-L-I-A-M, B-O-L-T-S, W-I-L-L-I-S, Box
3 126, Pratt, P-R-A-T-T, West Virginia 25162. I'm the
4 chairman of the mine health and safety committee for Local
5 Union 8843 located at Cannelton, West Virginia.

6 We have a couple of distinctions at our Cannelton
7 mines. We've been there -- not me in particular, but we've
8 been there for over 100 years in continuous operation. We
9 had the first long wall in the United States of America. We
10 had the first mountaintop removal mine in the State of West
11 Virginia, and we're still operating today and producing more
12 coal with less people than ever I think anyone could imagine
13 some ten or 15 years ago.

14 Some of you on the panel have known me for many
15 years either while I was working for the MWA International
16 Safety Division and also for the State of West Virginia as
17 Assistant Commissioner of the Department of Energy.

18 At our local union we have three underground
19 mines, one four section mine, one one section, one tunnel
20 mine and one strip mine and a large preparation plant
21 complex. As I've stated earlier, some of you know me
22 personally, so I will address you as my contemporaries as so
23 you are.

1 In 1969, I started working underground at the No.
2 8 mine at Cannelton and worked at several of our other mines
3 at the same general location since we have a common
4 seniority system where I worked. I've worked in low coal,
5 28 inches; medium coal, 40 inches; and high coal up to 12
6 feet, as well as working on the surface. I've worked on
7 conventional sections, Wilcox sections, continuous miner
8 sections and long wall mine operations. In all these areas,
9 a common factor is present. Coal dust.

10 We're here today to respond to these proposed
11 rules to protect miners, or us, from excessive coal mine
12 dust. I must say from reading those rules, it has been
13 difficult to understand what is really being proposed. All
14 118 pages, written not to what I learned at the Mine Academy
15 over 20 years ago from many of know instructor Wayne Maxwell
16 who taught creative writing. It's not clear to me in these
17 rules, and I'm sure it's not clear to the rank and file
18 miners. It's muddled, to say the least, in many instances.

19 I also must say as an adjunct professor at the
20 local university, the Institute of Technology, my students
21 would probably have problems understanding what these rules
22 say and how they're written and at what level they're
23 written for comprehensive who doesn't have a college

1 education or hasn't been trained in other areas. That's not
2 to put down any of us miners. They's just tough to
3 understand. I think probably everyone here would agree with
4 that.

5 I will just give you a few examples. If I were to
6 enhance dust control measures, the first place I would look
7 at it would be to sample continuously since the sampling
8 devices to monitor dust are available and have been for the
9 last 15 years. This type of sampling could shut off the
10 machinery immediately when high concentrations of dust are
11 detected. Stop period.

12 We wouldn't have to worry about hiring hundreds of
13 inspectors. We wouldn't have to worry about coal companies
14 going through the frustrations of trying to figure out where
15 and when to control the dust and those things. It would be
16 apparent that it was happening at that time, and you
17 probably could readily see it, as I have in testing some of
18 these devices several years ago.

19 Also, I would take over the program fully. That's
20 not taking away the responsibilities, of course, of the
21 operators, but to make the approach to sample six times per
22 year. As some has stated already, this proposal seems to be
23 saying that we will sample on that many occasions.

1 If I were the operator, if I couldn't come up with
2 a system to control dust on six dates per year with advance
3 notice inspection on the advance time that it would take the
4 inspector to get to the section, then I wouldn't be much of
5 an operator not to be able to control dust on those six
6 days. I cut the production in half and clean the scrubbers
7 every 15 minutes, and that would be the end of it. There's
8 no dust there.

9 Third and last, because other people as well are
10 going to speak on these things, as Tom has spoke on them and
11 also Daryl spoke on them previously, other issues I have
12 great concerns. The proposed rules will in many ways set
13 back to the post 1969 dust control protections.

14 May I just say that MSHA recently conducted, and I
15 think it's been alluded to earlier either by Ron or Marvin,
16 that the x-ray testing has been going around the United
17 States. It's been to our mine. A good friend of mine that
18 I worked side by side with since starting underground in
19 1969 -- he started in 1968. He was running a cutting
20 machine the first shift I worked with him. He ran that
21 cutting machine and has since run the continuous mining
22 machine and still is a producing miner/operator today.

23 For all these years he took the x-rays as some

1 people encouraged him to do. He's already received 25
2 percent black lung payment from the State of West Virginia
3 through the x-ray process system going through the
4 hospitals. He found out that he had at least 25 percent
5 disability. Lo and behold, when he got the results back
6 from the x-ray system that MSHA had put on the property
7 guess how much black lung he had? Goose egg. Zero.

8 I'm telling you. I was with him last week, and I
9 stood right besides of him. He could barely breathe, but he
10 loves to mine coal, and he loves to run that continuous
11 mining machine so it's pressing on me as a safety committee
12 man and as a former representatives of the miners throughout
13 the United States and working with many people in Alabama
14 who have been in the mines, almost in every state, that we
15 must be more diligent to see that we take greater steps than
16 what has been proposed today.

17 In closing, I took a survey last night of the
18 miners in this room, and we were about half this size, about
19 how many chewed tobacco or did snuff. Over half did snuff
20 or chewed tobacco. Well, it makes me wonder not very much
21 because I use this in illustrations when I teach at school
22 or talking with people that are not in mining and most
23 recently when I was in southern California about a month ago

1 on why miners act the way they do. I'll basically go
2 through that, and then I'll be finished.

3 Everybody -- I guess not everyone, but a lot of
4 people wonder why miners wear hats. You see various and
5 sundry miners wearing a hat. I also wear a hat. Here's a
6 hat that we used at a recent rally that says Keep the
7 Promise. You know Doug Day, and that's sort of what we're
8 saying here today is keep the promise, MSHA, in doing what
9 the Act stated in reducing dust standards.

10 The reason we wear hats, and a lot of times they
11 even wear them in buildings, which at one time was not
12 acceptable. My former local union president wouldn't dare
13 let anyone wear a hat in a building in our local union
14 meetings, much less curse. He was just totally against
15 that. Everybody took off their hats at that time. He's
16 passed away. He died from black lung, as well as my dad.

17 When my dad died, prior to his dying he had a lung
18 removed. Dr. Prevaschultz cut away that lung. He had
19 advanced stages of black lung. Lo and behold, the death
20 certificate said he died of cancer. It didn't say anything
21 about black lung.

22 So wearing the hats and sitting around like this
23 at a ball game, and I'll make an illustration as I go away

1 from the mike and the recorder. I'm going to be squatting
2 in low coal. You sit around like this when you work low
3 coal. People make fun of miners for sitting in this
4 position. Well, I'm very comfortable sitting in this
5 position. I can sit at a basketball game or a football game
6 for the whole game like this. When you work low coal, you
7 work that way every day of your life and it doesn't bother
8 you. It's comfortable.

9 With the other issue, how many drive pickup trucks
10 in here? I'm one. I see a lot of hands going up. The
11 reason a lot of us drive pickup trucks is that the roads are
12 so bad going to the mines in eastern Kentucky and Virginia
13 and Alabama and West Virginia that you have to have a pickup
14 truck to get to work.

15 So back to chewing tobacco. We know why the
16 miners chew tobacco. If you work in a mine, you want to
17 allay the dust. You get hooked on the tobacco, and you chew
18 tobacco and do the snuff to keep from coughing. That's the
19 reason. You can go around to any of the coal mines and see
20 a lot of people chewing tobacco, but it's a stigma that's
21 put on us as miners. People make fun of us for doing those
22 things that it's a hazard of the occupation.

23 So with the chewing tobacco and the dipping of

1 snuff illustration, as I finish this we can't allow the dust
2 that we breathe every day at work that we can do something
3 about, and we have the facilities to prevent these things
4 from happening. As I've stated earlier, I'm not here to
5 condemn any of you for trying to make the system better, but
6 please take a step back and listen to us so we can jointly
7 make our workplace a healthy place to work.

8 Thank you.

9 (Applause.)

10 MR. NICHOLS: You mentioned advance notice on the
11 dust sampling. There is no advance nothing on compliance
12 sampling.

13 Also, when you were talking about staying in
14 compliance for these six sampling shifts that the operator
15 could cut production in half. You can't do that. I mean,
16 the operator is going to be required to keep production
17 records. These plans are going to be approved on the tenth
18 highest production number, and that won't work.

19 By today's sampling, an operator can set up ideal
20 conditions probably and sample and they won't have any
21 problem with operator sampling, but not under this rule.
22 The plan is going to be verified at a high production level.
23 We're going to have records that verify that production.

1 There's going to be no advance notice on compliance
2 sampling.

3 MR. W. WILLIS: I hope that's the case, Marvin. I
4 hope that's the case.

5 MR. NICHOLS: That's what the rule says.

6 MR. W. WILLIS: I know what the Act says. I know
7 what MSHA does not. That's supposed to be the case, but I
8 also know that many miners at our mine know every day that
9 an inspector is going to be there before he gets there.

10 MR. NICHOLS: Well, I would expect at some of
11 these big mines that's an every day occurrence. I mean, our
12 people are there about every day.

13 MR. W. WILLIS: Well, that's before they start,
14 Marvin. Before they start, they're still banned. I know
15 that we have fraud in the system. I'm not saying everybody
16 from MSHA is like that. I have a brother who's an MSHA
17 inspector and been an inspector for over 25 years, but it
18 really concerns me.

19 And then another point, and thank you for
20 clarifying that. Another point that something strange
21 seemed to be about the hearing that they had in Morgantown,
22 and it seems like it may be strange here today, that the
23 operators are not giving any testimony. That kind of makes

1 me wonder. It must be a pretty good system for them.
2 They've not saying anything about it, and they're not
3 complaining about it usually.

4 As Carl Boone would note, I got ran out of a
5 meeting one time on Wilcox Mines when I went to the Supreme
6 Court. We basically outlawed them in the State of West
7 Virginia. Then I came down here and gave a speech and was
8 threatened to be killed giving that speech that day. I
9 think Carl was called on the carpet by MSHA is what I heard
10 for that same hearing, but it does make me wonder.

11 It must be pretty good or we'd have a lot of
12 people here testifying for management, that my understanding
13 was in Morgantown there was not, and it's not giving
14 presentations here today. It may be so. It may not be so.

15 MR. NICHOLS: Well, the operators aren't saying
16 that, but if you've got information on MSHA inspectors
17 giving advance notice, I'd be most interested in that.

18 MR. W. WILLIS: We'll talk about that more. No
19 problem. We'll talk about that.

20 MR. NICHOLS: Most interested. Thanks, Bolts.

21 MR. W. WILLIS: Thank you.

22 MR. NICHOLS: Our next presenter is Bo Willis.

23 MR. B. WILLIS: Brother Don?

1 MR. NICHOLS: Brother Bo?

2 MR. B. WILLIS: I'm Bo Willis, United Mine Workers
3 of America. That's B-O, W-I-L-L-I-S, president of Local
4 Union 2274, United Mine Workers, District 20, Subdistrict
5 28, in Virginia.

6 Two or three things I'd like to touch on. One
7 thing you just hit one when you were talking to Bolts about
8 advance notice. Advance notice is they may not know the day
9 that the inspector is coming, but prior to that shift
10 they're going to put a dust pump or whatever on a miner when
11 he goes underground. That is advance notice because before
12 that shift starts the mine operator knows we're being
13 sampled. Whatever we need to do to take care of those
14 people that day, they're going to do it. It happens. It
15 happens every day.

16 Another thing you brought up earlier about the
17 dust standards being raised to 2.33 in order to go in and
18 tell the Judge they're definitely out of compliance because
19 it was 2.33. That's above 2.0. If you get a speeding
20 ticket 65 and above, you're going to get a speeding ticket
21 at 66. 2.1? You're going to get a dust violation. If two
22 milligrams per cubic meter is the standard, then the
23 operator should be able to go by that standard.

1 What happens to a dust sample where we've been
2 talking about continuous monitoring and what's available in,
3 you know, today's technology and machine mounted sensors? I
4 understand that there's been a little bit of problems from
5 some of the machine mounted sensors falling apart. Well, if
6 the technology is available to let the sensor work but the
7 hardware fell apart because the washers weren't strong
8 enough or the bolts weren't tight enough or whatever, you
9 know, those things can be fixed. That technology is
10 available.

11 You've also got mine atmospheric monitoring
12 systems that monitor methane, carbon monoxide, water levels,
13 pumps, belts, carbon monoxide, dust levels. Just about
14 anything you can think of can be monitored today through
15 atmospheric monitoring systems. You can trend every sensor
16 and see what it did throughout an eight hour period. You
17 can trend it and back it up to last month. If you've got
18 carbon monoxide problems on a belt, you get a little belt
19 roller getting a little bit hot, you can watch what that
20 sensor is doing, and you just about pinpoint where the
21 roller is.

22 As far as your dust sensors, if you've got a
23 machine mounted dust sensor and you've got a roof bolter

1 sitting downwind of a miner and he's bolting in the dust,
2 well, if he backs out and says it's too dusty and MSHA comes
3 in and says hey, how do you know it's too dusty, I can see
4 the dust and I couldn't breathe, but you don't have any
5 definite proof that that man is not going to lose his job
6 because he felt like he was going to exercise his personal
7 option to get into a safe position.

8 You know, you've got the ability to say we'll use
9 these dust monitors, and you can legislate it, or you can
10 put it into your rules, and you can say we're going to go to
11 continuous monitoring. If you get over two milligrams then
12 you back your machine out, do something with the air, turn
13 the miner off, let them finish bolting or whatever. These
14 are options that you have that are available that will give
15 that miner immediately protection.

16 If he comes in here today and he says hey, you
17 know, I think I'm getting too much dust. I'm going to bid a
18 103(g) in order to get a little bit of protection down here.
19 I'm on this bolting cycle every day for two hours. I'm in
20 this dust, and it's usually six to eight milligrams per
21 cubic meter. It's pretty high if you're on the bottom side
22 of a miner and he's cutting a little bit of rock. If you've
23 got that ability and you don't put it in to where somebody

1 can use it, you know, then do you know what? Why do we even
2 bother with it? Those are some of the things that I wanted
3 to bring up.

4 You know, the reasons is we've got the technology
5 to do these things. We want to try to eliminate black lung
6 disease for coal miners, and by saying that we're going to
7 raise the standards, we've got a gentleman wearing an
8 airstream helmet back here. We're going to raise the
9 standards that would be acceptable under, and I heard, you
10 know, your talk about it a little bit earlier that if we
11 think something is not being done we're not going to agree
12 to let them go to four milligrams and so on.

13 But, if you all think based on whatever your
14 basis, you know, whatever you base your thinking, they've
15 done everything they can do so we're going to let them go to
16 four milligrams until they get through this bad part of
17 their mine or they slow their production down or they can
18 figure out a way to do something else with some other
19 standard.

20 During that time, this man is wearing this
21 airstream helmet. You've got noise standards where they've
22 got to wear ear plugs. They can't hear. If you're looking
23 down the long wall and looking at the lights coming back

1 through one of these lenses, you can't see, so they're going
2 to be blind. They can't hear, you know, and they're going
3 to be subjected to twice the normal standards of dust for
4 whatever period of time you all determine on a case by case
5 basis is acceptable, so they're going to be handicapped even
6 further, plus having their lungs at a, you know,
7 disadvantage.

8 You know, I'd like you all to think about that.
9 If a person decides that they want to go in and they want to
10 wear one of these helmets but they're still under two
11 milligrams, you know, we can agree with that, but to say
12 just because they want to wear those helmets we can raise
13 the standards because we think that these helmets give a two
14 milligram protection, you know, that's not really acceptable
15 because the people that are making that call aren't the
16 people that are down there having to live there, eat the
17 dust and look at all of it.

18 You do need to consider again, I mean, under your
19 advisory committee they suggested the continuous monitoring.
20 If you know you're in over two milligrams immediately and
21 you can withdraw, you've got one minute. You're out. You
22 can back up. They can shut the miner down, or they can do
23 whatever, and you're protected.

1 Thank you.

2 MR. NICHOLS: Thank you.

3 (Applause.)

4 MR. NICHOLS: There are places where a lot of
5 miners on their own wear airstream helmets, and we've never
6 given any consideration to companies for engineering
7 controls. They still have to comply with the two milligram
8 standard. The only place we're considering a consideration
9 is that one area downwind of the long wall shear.

10 The next presenter will be Randy Clements, UMWA.

11 MR. CLEMENTS: Good morning. My name is Randy
12 Clements, R-A-N-D-Y, C-L-E-M-E-N-T-S. I'm a member of the
13 United Mine Workers of America local 2368 where I represent
14 323 people. I also right now am the president of the local.
15 I've been on the safety committee for 14 years.

16 As we went around when we got these new proposals
17 and talking to our members about what was going on, they
18 proposed a question to me that I could not answer, and I
19 would like to ask this panel where I can carry the answer
20 back to them.

21 Their question was to me is, and I'll put it in a
22 nice term because if you've ever been around coal miners
23 they don't have the best language at times, but their

1 question to me was how many members of this panel has
2 actually worked in the coal mines? I think that's a fair
3 question to be asked and answered.

4 MR. NICHOLS: I don't know how many hands you see,
5 but we've got a lot of coal miners in the agency that we can
6 draw from, probably 700 or 800.

7 MR. CLEMENTS: Well, then I guess the question
8 that was asked of me I could reply back to them that there
9 is none that is on this panel that has worked in the coal
10 mine. Okay. Thank you.

11 MR. NICHOLS: You can tell them that MSHA is well
12 represented by coal miners, though.

13 MR. CLEMENTS: I will add that.

14 I made this trip on this behalf to Prestonsburg,
15 Kentucky, in order to speak at this hearing. After talking
16 to many of the members that I represent, they wanted me to
17 send a message up here clear that the message is in this
18 hearing for MSHA to go back to the drawing board and make
19 rules that will protect the coal miners, not hurt them.

20 In the early 1990s, the miners appealed for action
21 to reform the respirable dust program that evidence showed
22 from operator upon operator the continued corruption in the
23 program. The Secretary of Labor addressed the situation by

1 an MSHA task force for respirable dust. The task force was
2 to address three areas in particular, expanding the roles of
3 miners in their sampling program, review the feasibility of
4 MSHA taking over the operator sampling and work on
5 developing continuous dust monitoring devices, which
6 apparently these rules don't.

7 In 1995, the Secretary of Labor chartered an
8 official advisory committee for the purpose of recommending
9 health and safety standards and to overhaul the troubled
10 coal mine respirable dust program. The advisory committee
11 was on record calling for engineering controls that
12 specifically noted that administrative controls should not
13 substitute for engineering controls. The UMWA has supported
14 the advisory committee's recommendations, which are, A,
15 attention to the respirable dust program.

16 MSHA's proposed rules ignore the modest demands of
17 the troubled sampling program. MSHA's proposed rules
18 dramatically reduce the frequency of sampling, shift
19 sampling, by 83 percent in allowing the mine operators to
20 double the two milligram standard to four milligrams. The
21 advisory committee called for increased compliance sampling
22 and lowering the dust standard levels. The MSHA proposed
23 rules make one point clear to coal miners; that the

1 compliance dust sampling is not important.

2 As we all know, respirable dust is a problem in
3 the coal mines because of the development of larger
4 equipment, bigger long wall panels. In this report, you
5 only see pictures, as my brother here beside me will show
6 you all pictures, of dust filters that miners today are
7 wearing, and I want it to be noted that this long wall under
8 the current standards is in compliance. The pictures he'll
9 show you on one hand will be the pictures of what they're
10 wearing, and the other one will be a single one that is
11 unused.

12 The Example A that he's showing you is a picture
13 of a dust filter that was worn by a long wall helper
14 downwind of the shear after making only one pass with the
15 shear. Picture 2 is a filter that had been worn by two
16 miners on the long wall. The top filter is the long wall
17 helper that was working on the tailgate end of the long wall
18 after three passes. The bottom filter is a long wall helper
19 that was working no the headgate of the long wall after
20 three passes. As you can see, there's a dramatic difference
21 in the two.

22 Example C is a picture of two dust filters that
23 was worn by a miner on the long wall. Both dust filters is

1 a long wall helper that was working on the tailgate end of
2 the shear and had changed them out in between shifts,
3 halfway through the shift at his lunch break. Both of them
4 was after three passes.

5 Example D is two filters that was worn by a miner
6 on a long wall. Both dust filters was a long wall helper
7 that was working on the tailgate end of the shear and had
8 changed the filter out again during mid shift. Both of
9 these filters is after three passes, which the majority of
10 our long walls average about five to six passes.

11 Example E is two dust filters that was worn by
12 miners on the long wall. Again, both filters, these two
13 filters, are shear operators that had changed it out at the
14 end at his lunch break after making the top filter was three
15 passes. The bottom filter was after two passes.

16 Example F is a picture of three dust filters that
17 was worn by three long wall helpers on the same day and
18 shift. The top filter is the headgate long wall helper.
19 The middle filter is the mid long wall helper. The bottom
20 filter is the tailgate long wall helper. Again, I would
21 like to reiterate these are long walls that is under the
22 current standard plan or in compliance. Excuse me. The
23 examples that have been shown shows the large amount of

1 float coal dust that is distributed into the atmosphere
2 during a normal work shift.

3 By increasing the standard of the long wall to
4 four milligrams, is MSHA creating an atmosphere so filled
5 with float coal dust that it creates a disability hazard for
6 miners to perform their work? As you recall, the advisory
7 committee asked to lower the standard, not increase it.
8 They also asked for more frequent sampling.

9 I think before these new rules should go into
10 effect there are three questions that I would like to be
11 answered. One, how much float coal dust would have to be
12 distributed into the atmosphere in order to obtain a two
13 milligram or a four milligram respirable dust sample? As we
14 all know, respirable dust is the small particles that comes
15 from the float coal dust in the air.

16 The second question is by MSHA allowing the dust
17 standard to be increased to four milligrams, are they
18 creating a greater danger for dust explosions? Three, is
19 MSHA creating a visibility hazard by allowing the float
20 coal dust in the atmosphere to be increased?

21 MSHA insists that the recommendations of the new
22 proposed dust rules would fix the troubled dust sampling
23 program. I would have to say in this hearing to the

1 proposed dust rules they will become known nationwide not as
2 the rules that protect the miners and do away with black
3 lung, but will become known as the rules that possibly have
4 caused a great deal of mine explosions and deaths in the
5 coal fields.

6 Should these new rules have been in effect when
7 the methane ignition occurred in Willow Creek Mines in
8 Price, Utah, here recently, not only, unfortunately, would
9 two miners have been killed, but also it could have created
10 a major dust explosion which could have killed everyone that
11 was working on that owl shift.

12 Again, I send this message from my members for
13 MSHA to go back to the drawing board and follow the advisory
14 committee's recommendation and protect the coal miner's
15 rights.

16 Thank you.

17 MR. NICHOLS: Thank you.

18 (Applause.)

19 MR. NICHOLS: Randy, do you want to submit those
20 folders for the record?

21 MR. CLEMENTS: I can give you a copy of the --

22 MR. NICHOLS: A copy of them I mean.

23 MR. CLEMENTS: -- whole thing.

1 MR. NICHOLS: I'll say it once more, and I won't
2 keep coming back to it. We're not raising the dust levels
3 to four milligrams on the long wall. Four milligrams is the
4 protection factor for that airstream helmet that we can see
5 here in the audience.

6 The manufacturer of that helmet recommends a
7 correction factor of 25, which would be two times. That
8 would be 50. What we've said is no, that based on the
9 studies we've got four would be a more appropriate number,
10 but it does not mean that people are going to automatically
11 be able to go in and for this area downwind of the shear
12 operator and say I can have a four milligram standard.

13 What it means is that if it can't be engineered
14 down to two then somewhere between two and four it will be
15 protective of the miner. I think that's about as clear as I
16 can make it unless the panel wants to add something to that.
17 You may not agree with that, but that's the -- you may not
18 agree with the idea of allowing the airstream helmet, but
19 that is what the rule is talking about. It's not talking
20 about automatically raising the standard to four milligrams.

21 MR. SCHELL: The only other clarification I'd like
22 to make is if -- a big if. If a determination was made that
23 engineering controls wouldn't control downwind of the shear

1 operator, the high risk occupation would become the 044, the
2 shear operator. The environment that the shear operator has
3 to comply with, the two milligram standard, is only those
4 people that would go downwind of the shear operator, when
5 they were down there, that would be required to wear a PAPR
6 or to use administrative controls.

7 Remember, if we're using administrative controls
8 no one would be overexposed because they'd still have to
9 limit their exposure, so it's administrative control and
10 PAPRs, but again only if you can't control the environment
11 downwind of the shear operator and using administrative
12 controls. We're not substituting administrative controls
13 for the PAPR.

14 MR. NICHOLS: Okay. The next presenter will be
15 Rick Glover, UMWA.

16 MR. GLOVER: Thank you, Marvin. My name is Rick
17 Glover, G-L-O-V-E-R. I work for the United Mine Workers.
18 I've been in the industry approximately 30 years. I spent
19 13 years actually underground, and the other 17 years I've
20 pretty well represented the miners in southern West Virginia
21 and also throughout the country.

22 You know, this is probably one of the most complex
23 proposed rules in the history that I've been following

1 health and safety and the times that I came and had the
2 opportunity to speak before you all. I have learned more
3 today than I did know about the rule before I walked in
4 here.

5 I think we need to ask ourselves, because it's
6 been talked about, why are there so much discrepancy between
7 the federal advisory committee, and I would assume that this
8 group had a lot of impact on writing these proposed rules.
9 I would assume that. If not, correct me on that. Is that
10 pretty well accurate?

11 MS. KUEMPEL: I would like to add one
12 clarification, the clarification that NIOSH is on the single
13 shift sample rule. The second one dealing with the dust
14 ventilation is MSHA, just for clarification.

15 MR. GLOVER: Yes. Yes. I understood that, but
16 the point I'm going to make, and I think it's the reason why
17 we keep referring to the advisory report and because for one
18 we believe that will protect our miners much more than this
19 proposed rule, and the reason is, and I think it was a fair
20 question. I don't think it was what I will say is slighted
21 against any individual sitting on this panel.

22 I was involved whenever they traveled the coal
23 fields. They went, and they seen firsthand the dust

1 conditions. They were in prep plants. They were in surface
2 mines. They were underground. They talked to miners. They
3 seen the coal dust on the miners faces so that I think it
4 has more of a bearing, and I'm not slighting anyone on this
5 panel, and I hope not to offend anyone. If I do, so be it,
6 but I'm trying to say that we all do not realize sometimes
7 how severe or how effective something is unless you go do it
8 yourself.

9 I mean, it's easy just today. We're sitting in a
10 room here breathing pretty good air, I would assume. All
11 indication. I feel comfortable in here, but currently right
12 today we have people that is in the mines mining coal and
13 the dust, and they're breathing dust.

14 It's kind of like when you live in Washington,
15 D.C., and I won't slight you people. You live in Arlington
16 probably. We've got people in our office, and I'm not
17 slighting our office, that forget the reality in coal
18 fields, but when you live there and you see the economic
19 impact, you see miners having to do things that they never
20 dreamed they'd have to do, and I'm speaking of breathing
21 dust. It's called economic pressures.

22 They look toward this agency, which under the Act
23 guarantees the most precious resource is the coal miner.

1 Sometimes we get into economics and don't want to put a
2 burden on a coal company, but whenever, you know, you open
3 the Act or the first page of the Act we talk about that most
4 precious resource.

5 Now, since mining of coal has begun we have had
6 coal miners dying from black lung. I think we all can agree
7 with that. I think we took a giant step in 1969. That's
8 basically when I came into this industry, and I don't want
9 to take too long and take too much of your time because I do
10 know there's been a lot said here today, but I think it's
11 important.

12 I'm going to refer back to my childhood because I
13 grew up in a coal camp. I'll never forget the first victim
14 of coal dust, and I was approximately ten years old. The
15 individual's name was Mr. Gerald, and he lived right up on
16 the hill from where I was raised. He passed away, which at
17 that time they called it silicosis. Now, I'll never forget
18 my father saying he died from silicosis. It wasn't black
19 lung. I can remember this because his wife run down to our
20 home, and actually my dad rode up there, and me as a kid
21 followed him up there. In all honesty, it was the first
22 dead body I ever seen, so it had a big impact on me.

23 Anyway, the ambulance came. They took Mr. Gerald

1 away. It made me wonder, you know, what is silicosis. I'd
2 see my dad coming home with a dirty face, seen my
3 grandfather later in years die from black lung. It's a slow
4 death.

5 The point I'm making is it was there, it's for
6 real, and I also believe it's there today. I'd say
7 sincerely to everyone on this panel I think if we don't
8 believe that and the four milligram or two milligram
9 standard, and I'm going to throw some other things out that
10 I think you should consider.

11 Really I think you should go back and review that
12 advisory report and focus on what these individuals have to
13 say here today because one of the reasons I don't want to
14 take too much time, which it's probably going to take more
15 than I want to, is they're going to tell you some of the
16 hands on things that they do on a daily basis and the
17 conditions of work, and I don't want to take any time away
18 from those individuals.

19 Going back, I come into the mine in 1970, and I
20 seen the dirty faces, seen the dust, sucked the dust, seen
21 my father die from black lung. The federal government said
22 he didn't have it. When he passed away in 1997, my mother
23 had already passed away. No dependents, but he asked me,

1 because he was always denied black lung, to have a biopsy of
2 his lungs. He knew he had black lung. He couldn't breathe.
3 The x-rays, the blood gas at the hospital, all the things
4 that they run him around said he didn't have it.

5 I did that. It was tough. I got the report.
6 Sure enough, he had black lung. Severe stages of black
7 lung. As Bolts referred to about the x-rays, Bolts Willis,
8 about whenever you all came around and I guess a lot of
9 people satisfied. Overall, you know, you didn't see on the
10 x-rays near the amount of black lung they thought could be
11 out there. I only make that point because the x-rays, the
12 blood gases and everything is not telling the true story.

13 So, what do we have to do? We have to eradicate
14 the dust. We've got an obligation to do that. It's the
15 right thing to do. At whatever expense it takes this
16 industry, this industry owes miners an environment that
17 we're in today. This industry owes that to our miners day
18 in and day out, and that's even if we talk about diesel, we
19 talk about dust, whatever the issue is. We deserve good air
20 and good water. It's something the Lord give us, and we
21 deserve it. It's something that our bodies has to have.

22 But, let's talk about black lung for just a
23 second. We come up with regulations. Generally they're cut

1 and dried. If you touch a trolley wire here, you know, we
2 put barbs on it. If you touch it, it's going to bite you.
3 You know it's there. You know how to protect yourself.

4 Black lung creeps up on you day after day after
5 day, and we all know this. I'm just kind of going through
6 something to share with you. Then it bites you all at once.
7 Then the first thing you know, as Daryl talked about, we see
8 our friends dying off. We find out they have black lung.

9 We have come a long ways, and I give MSHA a lot of
10 credit. I give Congress a lot of credit in 1969. A lot of
11 people suffered for that in 1977 when we upgraded, but we
12 cannot, the point I'm making, go back to a greater standard
13 than we have.

14 Now, I can make some recommendations, and I fully
15 support what the Federal Advisory Board did, the committee.
16 They worked hard at it. They seen firsthand, but let's talk
17 about the buffer zone. You talked just a little bit about
18 the importance of two milligrams, and we'll kick it up there
19 to I think it's 2.33 or something like that as a buffer zone
20 for the valley part. You better do that or we all -- if any
21 thing passes their going to take it to court and tear it all
22 to pieces. It's human nature. If I was a coal operator I
23 might be doing the same thing. I wouldn't say if I would or

1 I wouldn't. I haven't been in that predicament and don't
2 plan on being in that predicament.

3 The point is let's do this. On your continuous
4 miner sections, I know without a doubt that we can meet a
5 one point standard milligram. One point in the continuous
6 miner section. No doubt in my mind. We've got scrubbers.
7 We've got air. We can do it. It's proven.

8 Let's talk about long walls for a second. We're
9 talking about bumping them up to four. I'm convinced --
10 well, I know you're shaking your head, Marvin. I'm just
11 going to the extreme end. Under certain circumstances. Let
12 me put it like that so you won't shake your head there on
13 me.

14 MR. NICHOLS: Small.

15 MR. GLOVER: Small, yes. Okay. Let's go even
16 with the small. Let's do away with that small. Let's go
17 with the two point milligram standard on long wall and give
18 it a little buffer zone, the same as you would on a one on a
19 continuous miner section.

20 If you ever go to these airstream helmets, you've
21 done away with any kind of engineering controls that will
22 ever be considered. The bottom line is long walls will meet
23 a two point standard. If the guys want to wear an airstream

1 helmet, that's fine, but as this guy has sit here all day,
2 and I'd say it was pretty uncomfortable. He's going to talk
3 about that, and I'm not going to get into it because he's
4 going to tell you what the doggone -- being uncomfortable
5 all day in that thing.

6 But say if you do. We can meet, I know, a two
7 point standard on long walls. If you ever go to this, it's
8 going to be exactly on the hearing protection. Now, think
9 about it. I'm going to take a guess here. In 1978, we had
10 a Joy miner that had a scrubber on it. They disconnected
11 that scrubber. I never did know why other than the boss
12 come up there and said hey, this thing was sucking air in
13 and spraying it down. This was the greatest thing I'd seen
14 since I'd been in a coal mine.

15 I kept thinking and thinking, and it went for
16 years. They never would say. It wasn't required. Well,
17 then I come to find out a year or so later it was because of
18 the noise. We've got to try to get the noise down. The
19 scrubber is making too much noise.

20 Now, over the years we've over come that. We've
21 got scrubbers, the greatest thing that's happened to take
22 care of dust on continuous miners, but do you know how we
23 got the scrubbers? It wasn't because coal operators cared

1 about my lungs or coal miners' lungs or anybody in here. It
2 was because of extended cuts. That's the only reason that
3 they put scrubbers on. That's the only reason. The sad
4 part is the production dominated the protection for the
5 miners on the Hill, and that's a fact. Some can disagree,
6 but that's how Rick Glover feels because I've seen it.
7 That's how this industry operates.

8 We do have some good companies out there. We have
9 our share of bad companies. Currently right today we've got
10 dust fraud out there. Currently right today we have miners
11 dying, and currently right today we have investigations
12 going on with MSHA about dust.

13 Now, I want to just talk a little bit about the
14 effective plans, and then I'm going to wrap this thing up
15 because there's a lot of people, and if we all keep talking
16 a long time a lot of people aren't going to get it.

17 I've got some questions. Effective plans. I was
18 looking at your overview here this morning, and as you go
19 back, and I hope you come back with a better proposed rule,
20 and I would really appreciate when you do that it's not 700
21 pages and it's pretty simplified, but go through the coal
22 fields and do some briefing and educate us and then let us
23 make some comments.

1 We may be able to help you a lot better because I
2 haven't studied near as hard as Tom Wilson and a lot of
3 other people, and I haven't looked at that. I don't
4 consider myself a dummy, but I'm far from the highly
5 intelligent person, but I'll put my common sense up against
6 any individual that ever walked around here, and practical
7 mining is right up in there.

8 But effective plans. Let's just talk about that a
9 minute. This is kind of like I'm trying to -- of what
10 you're all wanting to do. You're going to come up with an
11 effective plan that's going to meet a certain amount of
12 milligrams, require the companies to go back, right? You're
13 going to have miners not participating in developing this
14 plan. Is that true?

15 MR. SCHELL: No.

16 MR. GLOVER: They will be involved in the -- I'm
17 wanting you to help me here because I want to educate --

18 MR. SCHELL: Yes.

19 MR. GLOVER: -- the people myself, too.

20 MR. SCHELL: Yes. Rick, it's a ventilation plan.

21 MR. GLOVER: Yes?

22 MR. SCHELL: There's a requirement that that be
23 shared with the miners.

1 MR. GLOVER: Yes, I know it's going to be shared.

2 MR. SCHELL: It's the same process that we go
3 through now to get an approved ventilation dust control
4 plan. We weren't proposing to change that.

5 MR. GLOVER: Okay. Now, we've got this effective
6 plan in place. We've had miner participation is what you're
7 saying to get this effective plan, and we have run our dust
8 surveys, and we have met all the criteria that you all got
9 lined up, which is pretty complex, which is this going to be
10 regulation, or is this going to be policy?

11 MR. SCHELL: It would be part of the ventilation
12 plan, so it would be you can cite it.

13 MR. GLOVER: Okay. Now let's go to the next one,
14 compliance with the plan. Now, whenever you come with
15 compliance is that going to be your bimonthlies to see that
16 your compliance --

17 MR. SCHELL: No. What we're saying, Rick, is a
18 couple things. Once that plan is approved, we've got the
19 requirement now that before every production shift the mine
20 operator has to check to see that those controls are in
21 place and operating.

22 MR. GLOVER: Right. That's the point that I was
23 hoping would come out --

1 MR. SCHELL: Yes.

2 MR. GLOVER: -- because that was going to be my
3 next question.

4 We've got a plan. MSHA is not going to be around
5 for two months give or take a week or whatever. I mean,
6 we've learned about, you know, that they're going to know
7 they're coming. Well, let's say that every inspector in
8 MSHA is honest, and I know a heck of a lot of good ones, but
9 the point I think some of them was making is how the company
10 knows that today is dust day. Let's make sure we've got
11 everything rolling. They've got signals.

12 MR. NICHOLS: Yes, but --

13 MR. GLOVER: Let me just finish here, Marvin, and
14 then you can ask me all the questions you want to.

15 MR. NICHOLS: All right. Go ahead.

16 MR. GLOVER: I'm going to make some points, and I
17 think it's important for everybody to understand. We've got
18 our compliance. We're dependent on these dust perimeters,
19 curtains, whatever will outline this plan.

20 I'd assume that the FAR section -- foremen,
21 whoever, is going to make sure those curtains are there and
22 the workers and everything like that for these two months,
23 you know. Some of the inspectors will come and make a

1 regular inspection where the curtains are up, take an air
2 reading here and there. Am I getting pretty close?

3 MR. NICHOLS: Yes. I mean, in these underground
4 mines of any size I dare say, especially the Jim Walter's
5 mine and mines like that, we've got more than one or two
6 inspectors in the mine.

7 MR. GLOVER: Do you know how many large mines we
8 have in southern West Virginia?

9 MR. NICHOLS: I know you have a smaller number
10 than you used to have, but I don't know.

11 MR. GLOVER: We have a whole lot smaller.

12 MR. NICHOLS: Yes.

13 MR. GLOVER: I'm not talking about our service
14 mines. We're probably talking about somewhere around ten,
15 and we've probably got about 300 small mines, 250, give or
16 take.

17 MR. NICHOLS: Yes.

18 MR. GLOVER: But anyway, I'm speaking of southern
19 West Virginia.

20 So we will depend once again for the companies for
21 two months to take care and make sure this effective plan
22 stays in place. We've got the fox guarding the chicken
23 house basically. The only trouble you're doing with it is

1 you took all the responsibility and all of the burden off
2 the operator, and the operator should be tickled to death.
3 They don't have to worry about fraud. They just only have
4 to, as has been mentioned earlier, every couple of months
5 make sure I'm right.

6 MR. SCHELL: I guess, Rick, and I'm not being
7 argumentative about it.

8 MR. GLOVER: This is being extreme, and I'm just
9 laying out the extremes.

10 MR. SCHELL: What we're having trouble
11 understanding is, and rightfully so, you've talked about how
12 ineffective operator sampling is.

13 MR. GLOVER: I haven't finished.

14 MR. SCHELL: Okay. I'm sorry. I'm sorry.

15 MR. GLOVER: Yes. Now, I'm going to give you an
16 idea on that. You've got MSHA going to come every two
17 months. It will depend on the companies and the laborers,
18 even the ones that has problems every day. We have good
19 mines. We have bad mines. As I mentioned earlier, we have
20 economic pressures on miners. They're doing things they
21 never dreamed they'd have to do.

22 But, I'm going to tell you a solution to this.
23 Monitoring the plan's effectiveness. MSHA comes bimonthly.

1 Why not require to get the company to do the samples and do
2 them more often to meet the criteria? Can there still be
3 fraud? You better believe it, but at least if you're
4 lowering the dust standard you make them take it whether
5 it's once a week on the whole crew or you have designated
6 operators.

7 There's got to be a solution. It keeps the
8 responsibility, the burden, on the operator rather than just
9 that every six months -- I mean every two months -- making
10 sure I'm in compliance. He's got to do it more often is the
11 point I've trying to make. You can never take that
12 responsibility off of the operator.

13 Now, that may not make sense, but the direction
14 we're headed -- now, if you're going to be there every day
15 or once a week and test the whole crew, I'd say hey, MSHA,
16 which I think that's what should happen. I believe in
17 continuous dust monitoring. If you can't come up with the
18 technology, which I do believe is available from what's been
19 told to me, that's the direction you should head.

20 That is the only way you'll ever know what miners
21 are actually breathing. Sample them every day. They say
22 boy, that gets expensive. It don't matter how expensive it
23 is when it comes to people's health. Let them send them to

1 you. If it's fraudulent, it will gradually come out, but
2 you're holding the operator responsible, and you're not just
3 saying you're no longer responsible for the conditions that
4 your miners are working in but for every two months, and
5 that's how I see this thing shaping up.

6 If we end up with policy, it will not be every six
7 months, or it will not be every month or every three weeks.
8 I don't know. Policy is no good, you know. I don't think
9 we deserve policy. I think we should put it in black and
10 white so the operators understand it, I understand it, the
11 miner understands what they have, and we don't have to worry
12 about it.

13 The only point I'm trying to make, and I'm not
14 trying to be derogatory, but every two months that you all
15 come around takes a heck of a burden off this industry.
16 They ought to be tickled to death. If you still make them
17 do their -- I don't care if it's every day. Miners deserve
18 it. We're mining more coal with less miners.

19 We should have more inspectors as many mines as is
20 being shut down. You should have adequate work force out
21 there. You all know that more than I do, but you should. I
22 mean, I traveled to D.C. in the middle of the night to try
23 to help you get your budget several times. It's been cut

1 very minimal.

2 But anyway, that's an idea, and I throw that out.
3 Whether it's right or wrong or indifferent, and I want to
4 point out for sure the reason why we are so supportive of
5 the advisory committee because they was there, and they seen
6 it firsthand. Not slighting any individual here, but if you
7 haven't been involved you should get involved. I know you
8 are highly intelligent people. I don't want to take
9 anything away from you when it comes to health, but there's
10 a whole lot of difference from what you read in a book and
11 what actually goes on when you get to doing it inside a coal
12 mine.

13 The other point I wanted to make about effective
14 plans. We have an effective plan, and you will come back in
15 two months. What if in that two months you hit rock? The
16 quartz goes up.

17 MR. NICHOLS: But keep in mind the bimonthly
18 sampling is minimum requirements.

19 MR. GLOVER: I understand that.

20 MR. NICHOLS: If the district managers chooses to
21 sample every month he can do that, I mean, for conditions
22 that -- a poor history of compliance or different
23 conditions, mining in rock. We've never been shy about

1 doing things in addition to the minimum.

2 MR. GLOVER: I understand that, Marvin, but the
3 point I'm making or I'm trying to make is two months is way
4 too long if we're serious about eradicating black lung in
5 the coal mines because conditions change every day. Every
6 day in a mine conditions change. We get in the bottom. We
7 get in the top. We get in middle bands. Seams drop. Seams
8 increase. Sometimes we've got to take extra because of the
9 rolls. We've got to take extra top.

10 I'm just saying if we are serious about
11 eradicating black lung in the coal mines, we've got to
12 reduce those standards. Is it feasible? You better believe
13 it is. Go back and do your research on continuous mining
14 sections. You can reach the one milligram standard.

15 I just wanted to say this earlier, and I know
16 we're ready to eat. If we ever go to accepting airstream
17 helmets, we'll be exactly, exactly like our hearing
18 protection.

19 Since MSHA, and relating back to that scrubber
20 about that noise and they disconnected it I was telling you
21 in the late 1970s, you know, to meet. They used to have us
22 putting rubber under the shields continuously working on
23 trying to get the noise level down. MSHA comes along and

1 comes out with a policy that the hearing protection is the
2 route to go.

3 There was never -- very minimal. For one thing,
4 there's no an incentive. The second thing is there's not a
5 mandate. There was no engineering controls developed or
6 very minimal -- they had no incentive to do it -- whenever
7 we started accepting hearing protection in lieu of
8 engineering controls.

9 If we start here with this and we open that door,
10 it will come to your miner sections. It will come to your
11 outby areas, and it will come everywhere else in the coal
12 mines. You might as well put them in a space suit and walk
13 them around.

14 MR. NICHOLS: It won't happen. I mean, it --

15 MR. GLOVER: It will, Marvin.

16 MR. NICHOLS: No. It's already been tried. When
17 I go out in Alabama, out west, I see a lot of miners wearing
18 airstream helmets that they choose to wear on their own.

19 We have been asked over and over by mine operators
20 to consider those engineering controls, which we've never
21 done, and we never will except for this one small area we're
22 talking about working downwind of the shear operator because
23 we think as much as people say that they continued

1 compliance day after day after day, there are some mines
2 where you don't have compliance with the two milligram
3 standard working downwind.

4 Now, is it better to keep arguing and say we have
5 got it, or does it make sense to adopt some additional
6 protection for the miner? That's all we're saying. I can't
7 tell you how many times I've been asked to consider the
8 airstream helmet in other sections of the mine as an
9 engineering control. We've never done that.

10 MR. GLOVER: You're like I am, Marvin. One of
11 these days I'm not going to be here and you're not going to
12 be here. There will be somebody else here.

13 MR. NICHOLS: It isn't me. It's been the agency's
14 position --

15 MR. GLOVER: Yes.

16 MR. NICHOLS: -- that it is not an engineering
17 control.

18 MR. GLOVER: Okay. Anyway, you know, that's a
19 point that I want to make because I think, you know, that we
20 can very easily get into that posture. It may not be in
21 your heart to do that. It may not be in anyone's in this
22 room.

23 MR. NICHOLS: I've been with the agency almost 30

1 years, and --

2 MR. GLOVER: Yes.

3 MR. NICHOLS: -- it's been that position from day
4 one.

5 MR. GLOVER: The only thing is you're going to
6 retire one of these days.

7 MR. NICHOLS: One of these days I will.

8 MR. GLOVER: I'll just go ahead and close here
9 because I've talked long enough, and I do want to thank each
10 and every one of you.

11 I hope I don't offend anyone here because I know
12 you're highly intelligent people, but I do know that you've
13 got to look at the miners' environment. You've got to live
14 it. You've got to know what it is to really understand why
15 this is so critical and why we believe so hard in it. It's
16 long past time to eradicate black lung in the coal mines.
17 We have continuous monitoring available, and if we don't
18 they should be sampling every day as far as I'm concerned.

19 MSHA should follow up with theirs like your plans
20 are, but don't never take the responsibility of the
21 operators off of them to where they put that responsibility
22 entirely onto you unless you're going to do it every day
23 with continuous monitoring and be there.

1 Now, that's Rick Glover's position. I encourage
2 you to go back and review once again the advisory report and
3 look at why they felt like that. Whoever called the shots
4 that this document was good or bad, you know, in you all's
5 agency I don't know, but I do know that I've heard Davitt
6 McAteer, and I can't give you a date, even said the only way
7 we'll ever eradicate black lung is to get it down to at
8 least one milligram. We can do that.

9 I don't know about long walls. I think we can in
10 our area, but I can't speak in Alabama. In our areas, we
11 can do that. If you want to increase the buffer zone, put
12 it down to one milligram and like 1.25 so when we go to
13 Court you can hold the operators.

14 What I say comes from my heart. I would just say
15 in closing, you know, I want to take the opportunity to
16 thank you for the time that you've given us because I've
17 been before you up here, and maybe it's the right thing to
18 do. You give someone five minutes. You don't get to say a
19 whole lot in five minutes, but you all have been kind in
20 letting us lay out all of our positions.

21 But, remember just what your objective is,
22 whatever the final product comes out, and that is I hope to
23 eradicate black lung. We've got a golden opportunity.

1 Improve the working conditions, as referred to earlier, for
2 our most valuable resource, which is our coal miners.

3 I thank you very much. Any questions? I'll be
4 glad to try to answer them.

5 MR. NICHOLS: I think your comment about doing
6 some up front briefing on these future rules is a good one;
7 that we go out and try to do some with education.

8 MR. GLOVER: All right. Thank you.

9 MR. NICHOLS: Thank you, Rick.

10 (Applause.)

11 MR. NICHOLS: Okay. Let's break until 1:15.
12 Larry Tolliver will be the first presenter after lunch.

13 (Whereupon, at 12:15 p.m. the hearing in the
14 above-entitled matter was recessed, to reconvene at
15 1:15 p.m. this same day, Thursday, August 10, 2000.)

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1 wear.

2 Air flow at our mines, probably the highest coal
3 we have is probably 60 inches. When you put your shields
4 and stuff in there and you have to get underneath and crawl,
5 you're talking probably anywhere from about 38 inches up to
6 probably about 52 inches of clearance underneath that. If
7 you try to wear something like that and try to see where
8 you're going and try to protect yourself with that, it
9 becomes more of a hazard than what is the benefit to you.

10 Where I see going with this airstream helmet issue
11 is that once a coal operator is allowed to use that to come
12 in compliance, then he has met his criteria as far as his
13 company to get himself in compliance by MSHA standards, but
14 now I know how miners are. They get frustrated because they
15 can't get around. They can't see. They can't breathe
16 through them. What I'm afraid will happen is the miners
17 will just disregard them. They'll quit using them.

18 But now, when MSHA comes in and tries to cite the
19 company, the company, all they're going to do is say now
20 wait a minute. We're meeting our criteria. We have given
21 these employees these helmets and everything to wear. We
22 can't force them to wear them. The people are going to be
23 jeopardizing themselves because, like I said, it's

1 inconvenient and in some instances dangerous for them to
2 wear stuff like that trying to work on that jack lines.
3 Believe you me, you do have dust in the jack lines.

4 Down at U.S. Steel we keep our dust pretty much
5 under control, but we're a big operation. We have 400 and
6 some union people that works there, not counting the
7 salaried people. We have a safety committee and, as you was
8 talking about federal inspectors, we have two resident
9 inspectors assigned to our mines who are there almost every
10 day. We have one state inspector. Through them and through
11 the committees and through the UMWA itself, we pretty much
12 enforce U.S. Steel, and so does any other big company get
13 enforced and apply the standards.

14 What really worries me is these small operators
15 where an inspector, if it's one section mines he can
16 probably complete his inspection probably within one week to
17 a week and a half. You see that inspector no more until the
18 next quarter. Then who is going to make these small mines
19 adhere to the dust regs if we can't do it now? How are we
20 going to make them adhere to them in the future if we even
21 increase this stuff?

22 I hear obscure stories now from inspectors that go
23 to these other mines that is absolutely unreal. The state

1 inspector tells me. He says I go on the property. They
2 notify them underground I'm coming in. He said I get to the
3 section, and a brand new line curtain is hanging on that
4 section. He says it's never been used before. He says
5 there's nothing I can do about it. He said I can't issue no
6 citation because, he said, they're complying with the law,
7 but he says I know as quick as I leave that property that
8 line curtain comes down.

9 I see employees that does not bathe at the work
10 site. I see them from other mines. The majority of them
11 are non-union mines. Folks, I'm going to tell you. You
12 need to see what they look like. The coal dust that is
13 embedded into their faces, their clothes. When you can see
14 that, you know they're not adhering to the ventilation
15 policies.

16 They don't have any say so of what they do,
17 because they know if they complain these operators are going
18 to tell them there's the street. They have no recourse.
19 They don't have a union. They don't have safety officials
20 to back them up, and they know if they go to the federal
21 agencies or the state agencies and they are found out about,
22 they're going to get fired.

23 Some way, somehow, they're going to get rid of

1 them, and that's what really worries me, like I said, is
2 small operations and even the non-union operations out here.
3 It worries me that people are going to be jeopardized and
4 killed.

5 When we start raising and giving operators a
6 higher dust level for Part 90 miners and even for long walls
7 when we say we can raise it to four milligrams, that's
8 giving them a very bad disadvantage to the working men, the
9 men that work in these mines.

10 I think we need to lower the dust levels, just
11 like Rick Glover was talking about. We need to look at
12 getting one milligram on miner sections. We need to try to
13 bring everything we can down instead of raising them up and
14 giving them a more disadvantage against the workers because
15 I'll tell you. These companies, and you all know it. These
16 companies will jump on this stuff if they can. They'll jump
17 on this any time they can get a chance to better themselves.
18 These coal companies will. You all know it as good as I do.

19 I've talked to foremen at U.S. Steel that have
20 come from non-union mines. We have several of them that has
21 worked at several different operations, and I'll tell you
22 right now some of the horror stories they tell me and talk
23 about. It's unreal how they mine coal. When you get on the

1 sections, you have super sections. You have two miners on a
2 section, and you run both miners at one time and mine coal.
3 Folks, you're not having no kind of dust control. You're
4 endangering everybody's lives in that mine, and most of
5 those mines are non-union.

6 When they're already doing that now, we can't
7 afford to give them a different kind of advantage that the
8 law says they can do legally because they're doing it
9 illegally now. We need to crack down on the dust controls
10 and make them enforce them and get tighter with them is what
11 we need to do.

12 That's all I have.

13 MR. NICHOLS: Okay. Thanks, Larry.

14 (Applause.)

15 MR. NICHOLS: The next presenter will be Danny
16 Sparks, UMWA.

17 MR. SPARKS: Hi. My name is Danny Sparks,
18 D-A-N-N-Y, S-P-A-R-K-S. First of all, Mr. Moderator and
19 panel, I'd like to thank you for the opportunity to speak.
20 As the old saying goes, I'm as nervous as a long tailed cat
21 in a room full of rocking chairs, so just bear with me here.

22 Anyway, I'm president as Local Union 2232. I
23 represent 140 active miners and 300 plus laid off miners

1 that's on the panel. I'm presently a member of the Mine
2 Health and Safety Advisory Board in Virginia, and I'm here
3 to log testimony here this morning. I wrote about ten pages
4 of notes, but as we go on maybe I'll refer to some of them.

5 On July 7 when I got up, you know, I was getting
6 ready for work. I go out and get the paper. I look at the
7 paper, and it says -- in the paper we got it says black lung
8 has been eliminated from the mines. I didn't get a chance
9 to get into it, but as I go to work I get to thinking about
10 it and then get at work and talk to some of the men, and
11 some of them had seen the headline. They asked me what it
12 meant.

13 My first thought was well, MSHA is going to take
14 over the sampling program. There will be no more cheating,
15 no more wetting down the track ways, no more increasing your
16 water infusion in the coal. MSHA is going to take it over,
17 and we know what we've got.

18 Then the next comment was we're going to get a
19 full shift sampling. If you go in the mines at 8:00 and
20 when you come out at 6:00 or whatever, you're going to be
21 sampled for the full amount of the time you was there. My
22 next thought was well, at least 90 percent of production,
23 maybe even 100 percent.

1 Then my last thought was at the least we would be
2 one-half milligram would be the maximum, maybe even down to
3 one milligram. You can imagine my surprise or whatever as I
4 got into these regs.

5 From what I can understand or got to reading them,
6 first of all, if MSHA takes over the program, the dust
7 sampling program, and, you know, I know we've got some
8 companies out there that does the sampling honest and, you
9 know, you know they're concerned, but I was probably in
10 three different meetings with Davitt McAteer, and I
11 testified before the advisory committee on this very thing,
12 black lung, and Davitt, and it keeps going over and over in
13 my mind, but Davitt said that we're going to eradicate black
14 lung from the United States or from the mines.

15 To be honest with you, after looking at these regs
16 I'm not even sure we put a dent in it. In a lot of cases I
17 believe we even hurt what we already had as the proposed
18 rules as written goes in.

19 I work at Island Creek Coal Company that's run by
20 Consol Energy, and I am a long wall jack setter, the tail
21 jack setter. I know you spoke about the airstream helmets
22 or we call them Darth Vader helmets, but, anyway, you spoke
23 that this would just be a small number affected or a small

1 area. Well, you're looking at one that would be affected if
2 it comes to that. I've tried wearing airstream helmets.
3 They're cumbersome. They're hot. They're sweaty. The
4 shields sweat up. They're almost impossible to wear.

5 I know that you said going to the four milligrams
6 would just be when everything else is exhausted, but the old
7 saying goes if you give them an inch they take a mile. If
8 you open the door as this to be a way to come in compliance,
9 the airstream helmets, and don't get me wrong. If a man
10 wants to wear them that's fine, but if it's a way to come in
11 compliance then you've defeated the purpose.

12 In my opinion, what experience I've had with the
13 airstream helmets, the only advantage I found to it is like
14 when you're setting jacks when the booster material, the
15 rock and stuff comes off the jack. It keeps it out of your
16 eyes and stuff. As far as respiratory, I didn't see
17 anything.

18 On the full shift sampling, our shift starts at
19 8:00. I'm on day shift. We go in the mines, and whether
20 it's company sampling or the inspector sampling, when we go
21 in the mine you get on the man bus or portabus, whatever you
22 want to call it, and we advance to the long wall. We
23 usually arrive on the long wall at 8:30 or 20 minutes to

1 9:00. A lot of times the company gives us their dust pumps
2 outside and a lot of times the inspectors do, but there have
3 been occasion when they give them to you when you get on
4 stage.

5 You put the dust pump on, and you go down the jack
6 line. We run a 1,000 foot face. We're putting 180,000 or
7 200,000 cubic foot of air across the headgate to the face.
8 It is a gassy mine, and right now we're in compliance on
9 dust. We haven't been out in the last while.

10 Getting back to the sampling, you take this, and
11 the inspector or company, whoever is sampling, and then at
12 3:00, 3:10, 3:15, they come get the dust pumps and they say
13 well, we've got to go. Here I am setting jacks or in a lot
14 of cases running the shear. I'm there until 4:45 or ten
15 minutes to 5:00 exposed to this dust, so at the least you
16 need a full shift. Let me take the pump in with me as I go
17 in, and then when I come out ten hours later I'll have the
18 pump with me and turn it in.

19 You know, it's not only the long wall that creates
20 dust or the section. I mean, you've got dust outby. Any
21 time you're transporting coal, transferring it to different
22 belts you've got dust. Not only coal dust. You've got rock
23 dust. It's different amounts. You've got sand dust if

1 you've got track equipment, you know. It's not only in the
2 face area, so we need full shift sampling from the time you
3 leave the portal until the time you get back.

4 On the production levels, for the last 20 years
5 the dust standards has been the easiest thing to cheat and
6 cheat legally if there is such a thing. Sixty percent
7 production at the current sample or whatever, if you're
8 getting eight runs a shift and you're just required to get
9 60 percent. You run six runs, and then there's always
10 something you have to do. Always before they do their belt
11 work on third shift or whatever, but it just so happens the
12 day their sampling they had to take the belt structure out
13 that day. That's probably --.

14 It's too easy to cheat, and that's the reason I
15 was getting back to if MSHA took over. You know, I'm not
16 here accusing anybody of this falsifying or whatever, but
17 the day before sampling day if you wet the track down
18 leading to the long wall section and don't do it no other
19 than but the day before sampling day, if you plan your
20 sample days where your water infusion is at its greatest or
21 you're closer to a water infusion hole, if you make the rule
22 or the foreman on the long wall tells you that no one runs a
23 scoop outby today, if you need oil or whatever, you know,

1 you hand pat it, but see, all these things they add up.

2 The dust that's accumulating on the long wall
3 section, all the dust that's accumulated outby that whole
4 area is funneled across your long wall face, especially in
5 our area. We've got so much gas. You have to have the air,
6 you know, to dilute the gas.

7 So the sampling, if you can reduce your sample and
8 slow it down, but if you was at 100 percent of what your
9 sample was last week, if you averaged 20 foot a day, today
10 when you come to sample you have to run 20 foot or you'll be
11 back tomorrow sampling or the next day or whatever. You
12 need -- even 90 percent would be better than 60 percent.

13 I hear Ron say, and again I thank you for your
14 time. I know it's a long day and you hear a lot of
15 comments. You know, I'm not here pointing fingers or
16 browbeating no one, but I think if we had really got to what
17 the advisory committee wanted I think that we would at least
18 have a 90 percent production before it would counted a valid
19 sample.

20 Ron made the comment when he was showing the
21 slides about once, and this is the way I understood it.
22 Once they come out of compliance when you come into the
23 sample that they would be much higher than average

1 production.

2 See, that's not spelled out. It don't say you
3 come out of compliance, and when we come back to sample or
4 compliance sample or whatever you'll run 100 percent of your
5 average. You know, they don't say that. For the life of
6 me, I don't see how in the world if we get 20 foot a day how
7 could you have a valid foot on 14 foot that day. I mean,
8 this is real numbers, what people or miners is breathing
9 every day, so it at least needs to be 90.

10 As far as the dust standards, the two milligrams,
11 I thought maybe we was even going to go to one and a half or
12 maybe even one. I know Marvin talked about the airstream
13 helmets, you know, and how, you know, you hear a lot of
14 comments how you doubled the standard to four, but I know in
15 some cases I know you were saying that it's just an area
16 where they can't come in compliance downwind or in by your
17 tail drum on the shear, but in reality you had, though, that
18 standard from two to four. Why didn't you just say it would
19 be two milligrams or less?

20 You know, I don't know. Really I'm at a loss of
21 words. I'm sad. I not only represent the union miners, but
22 as a member of the Health and Safety Board of Virginia it is
23 bestowed upon me, and I don't take it lightly. I represent

1 every man that goes underground in the coal mines in
2 Virginia.

3 At big mines where you've got the union walk
4 arounds, you've got company safety reps, you know, things
5 for the most part is done right. If the standards was
6 better they'd be done a lot better, but for the most part.
7 You take these little, and pardon the expression. You take
8 these little dog holes, and it's not done that way. I
9 worked out six different coal mines in Virginia, four of
10 them being dog holes, and if you want to work there then you
11 eat the dust and you do that.

12 If MSHA, and I hate to be repetitive, but if MSHA
13 would take over the dust program then there wouldn't be no
14 getting your ducks in a row before sample day. I mean truly
15 take over the program. The single full shift sampling that
16 you talked about, that's good, but I can see drawbacks to
17 that. There's too many variables, and there's too many ways
18 to cheat the dust program before and even in these regs now.

19 From my first impression reading them, an
20 operator, if he's devious enough and he keeps coming out of
21 compliance, I envision him coming up with some kind of plan,
22 dust control plan or whatever, where it takes all
23 responsibility off of him. You know, I'm doing what I'm

1 supposed to do, and MSHA is saying well, you put airstream
2 helmets on your jack setter or your tail jack setter. Put
3 an airstream helmet on your tail shear operator to use. You
4 know, it's all right. We can go ahead and mine, but there's
5 better ways to mine.

6 Rick said in closing several times I'm reminded
7 of --

8 MR. NICHOLS: He never closed.

9 MR. TOLLIVER: Yes, I know. I'm reminded in
10 church when I was a young boy the preacher would say in
11 closing. I asked Dad. I said what does that mean? He said
12 it means he's going to talk about 30 more minutes.

13 (Laughter.)

14 MR. TOLLIVER: But in closing, and I hate to be
15 repetitive. MSHA needs to take over the program. We need
16 full shift sampling from the time you enter the mines until
17 the time you leave. We need the production level at least
18 90 percent, and we need the dust standards at two milligrams
19 or even lower. It can be achieved.

20 If you've got any questions, I'll try to answer
21 them. If not, I'm done.

22 MR. NICHOLS: Thank you, Danny.

23 (Applause.)

1 MR. NICHOLS: Rickey Parker, UMWA?

2 MR. PARKER: My name is Rickey Parker,
3 R-I-C-K-E-Y, P-A-R-K-E-R, and I'm chairman of the safety and
4 health committee for UMWA Local 2368. I'd like to thank the
5 panel for allowing me to appear before you today.

6 Many changes in the MSHA proposals are difficult
7 to understand. The preamble, the proposed rule and existing
8 rule all need to be read carefully to fully understand them.
9 As the old saying goes, the devil is in the details.

10 Side by side comparisons of the current rule are
11 difficult since MSHA proposes significant structural
12 changes. MSHA reduced some important protections and
13 substituted those legally enforceable protections with
14 agency policy. Some such changes are reflected only in
15 preamble, but not in the rule itself, and some are
16 curtailed. Some enforcement and proposal actions would be
17 discretionary.

18 MSHA publicity about the proposed rule has
19 contributed to the misunderstandings. For example, some
20 announced improvements are simply not to be found in the
21 proposed rule. The MSHA proposals ignore the longstanding
22 demands by miners and the UMWA on reforms needed to fix the
23 troubled dust sampling program. Despite MSHA's assertions,

1 the proposals disregard reforms sought in the lawsuit the
2 UMWA filed January 13, 2000, this year.

3 The proposed rule also ignores the findings and
4 recommendations of the 1996 federal advisory committee. The
5 Secretary of Labor established that committee to guide MSHA
6 in developing proposed rules to reform the dust sampling
7 program.

8 Several MSHA proposals contradict its
9 recommendations, undercutting protection for miners, and the
10 miners in UMWA participated in the advisory committee
11 recommendations which were aimed at fixing the flawed
12 respirable coal mine dust program and eradicating black lung
13 and silicosis diseases.

14 We ought to wonder how MSHA veered off so far from
15 the path from adding the protection miners have long sought
16 for and how its rule can be so contrary to the findings and
17 recommendations of the advisory committee. The proposal
18 makes one point clear to coal miners. Compliance sampling
19 is not important. Thus, while the MSHA proposals would add
20 single sampling in plan verification requirements, which
21 we're thankful for, they eliminate the compliance standards
22 in Part 70 of CFR, including the standards the miners could
23 point to and know what requirements were.

1 The proposed rule eliminates the entire compliance
2 sampling requirements of Parts 70 and 90 with no replacement
3 rules for compliance sampling. Also, it dramatically
4 reduced an 83 percent reduction for frequency of shifts
5 samples for respirable dust compliance. Finally, section
6 compliance sampling would occur only six shifts a year and
7 outby areas one time a year. Those are not guaranteed by
8 rule or funding.

9 It also would increase the dust exposure levels
10 above those contained in the Mine Act and current standards,
11 whereas the advisory committee recommendations were to lower
12 the dust standard for respirable coal mine dust.

13 The proposals would allow mine operators to double
14 the two milligram standard on long wall faces, while the
15 proposed rule states that the exposure level would be 2.3,
16 and for Part 90 miners outby and intake samples to 1.26.
17 These were referenced in the preamble by a formula.

18 It also permits mine operators to replace
19 engineering and environmental controls with the Recal
20 airstream helmets or administrative controls on long walls
21 in which the 20 years of mining experience that I have I've
22 never seen environmental or engineering controls exhausted
23 in a coal mine. I've seen our long walls get out of

1 compliance, and by the grace of God that mine operator comes
2 up with a plan, whether it be environmental or engineering
3 control, to simplify and get the long wall face in
4 compliance with the dust standards.

5 Various unique conditions of coal mining,
6 obstructive views, difficulty communicating, may compel
7 miners to lift the visors on their airstream helmets. The
8 actual fit or seal of this respirator helmet, to wear in
9 repeated work task motions in confined work spaces, raising
10 the visor and high velocities of air along the long wall
11 face may all significantly reduce the actual degree of
12 protection provided in the workplace.

13 Enforcement of the MSHA proposal is too fuzzy.
14 Miners may not know what to expect. The MSHA policy
15 addressing the sampling process and intended enforcement of
16 the plan verification and other standards appear to reduce
17 the policy and discretionary decision by MSHA or its
18 inspectors, and that is not good for miners or the mine
19 operators, as a matter of fact.

20 With an Administration that would be soft on
21 sampling levels, miner participation activities, approval of
22 increasing coal mine dust levels and other provisions could
23 leave the miners in a hole. With already the mistrust among

1 the working coal miners of this country pertaining to
2 respirable dust sampling practices and recommendations of
3 both NIOSH and the task group put together by the
4 government, along with the proposed rules, you're sending
5 that mistrust deeper into the coal fields of this country.

6 Despite reports of an MSHA takeover of compliance
7 sampling, in the proposed rules we don't see that. There's
8 nothing in the proposed rules on compliance sampling
9 requirements. To us, those were eliminated. Since it is
10 not a rule and funding has not been guaranteed, MSHA's
11 current sampling is not legally guaranteed and can be
12 reduced.

13 Despite references of increased miner
14 representation and participation, there were none in the
15 proposed rule. For compliance sampling, there have been no
16 more rights miners have had since 1997 or 1977 -- excuse me
17 -- in MSHA's plans to recognize by policy miners'
18 representatives rights to participate in announced MSHA
19 visits to verify dust plans. The industry has already
20 challenged that, and absent a rule miners will not likely
21 get it.

22 The rule again does call for single shift
23 sampling, and we appreciate that. That has been supported

1 by the miners and the UMWA. That proposal has been altered
2 by MSHA policy and other proposed rules reducing the benefit
3 for miners. Full shift samples would only be taken during
4 abatement sampling.

5 Routine compliance sampling, which will be the
6 vast majority of sampling, will not be full shifts. They
7 will be eight hour, 480 minute samples with some flexibility
8 when they will be taken during the shift. This brings to
9 mind what a full shift is today in the coal mining industry.
10 As many of my fellow brothers here have mentioned, a coal
11 miner routinely works nine to ten hour shifts producing coal
12 underground. Why for dust sampling purposes, may I ask, is
13 a coal miner only sampled eight hours when there are up to
14 two more hours in a working shift for him?

15 The proposed rule contains a dust control plan
16 verification that is complex. Although plan verification is
17 needed by all means and we support that, as designed it is
18 too complicated and may be ripe for the operator to abuse,
19 and enforcement is far too discretionary.

20 There are parts that truly need changes in the
21 proposed rules. There is no backup plan. The proposal
22 contains changes in the manner quartz is sampled, and the
23 full effect of those changes are still being analyzed, to be

1 honest with you. The rules implementing those are contained
2 in agency policy in the preamble.

3 The rules establish procedures for administrative
4 controls for mine operators to rotate miners, activities to
5 reduce exposure and comply with the dust standards. Under
6 that scheme, MSHA would not have operators under citation to
7 implement engineering controls, which would remove legal
8 rights miners had to enforce engineering controls. MSHA
9 policy on this discretion lacks teeth in enforcement and
10 clarity.

11 Ladies and gentlemen, the federal advisory
12 committee was officially chartered under Section 101(a) and
13 102(c) of the Federal Mine Safety Act of 1977. The advisory
14 committee was comprised of two representatives each of
15 miners and mine management and five neutral representatives
16 who had no interest in the mining industry.

17 Two UMWA health and safety officials served on
18 this committee. Those representatives, as well as several
19 miners and black lung victims across the country testified
20 before the federal advisory panel, and they laid out reforms
21 needed to overhaul the federal respirable dust program.

22 In the month of September, 1995, NIOSH issued a
23 criteria document calling for reforms in the coal mine dust

1 program. That document was forwarded by MSHA to the
2 advisory committee for consideration as they developed
3 recommendations to overhaul the coal mine sampling program
4 dust program.

5 The federal advisory committee sent its official
6 report detailing actions needed to reform the coal mine dust
7 program to the Secretary of Labor on November 14, 1996.
8 Under this Section 101(a)(2) of the Mine Act, upon
9 submission of recommendations from the advisory committee
10 presented, MSHA was obligated to publish a proposed rule for
11 reasons not doing so.

12 Following years of delay, the UMWA filed suit.
13 They filed suit against MSHA on January 13, 2000, to force
14 MSHA to issue regulations on key reforms miners and the UMWA
15 had sought for years and were recommended by the advisory
16 committee over three years earlier.

17 I am asked numerous times in the coal fields why
18 did MSHA turn their back on the coal miner, the UMWA and
19 advisory committee with their recommendations and force UMWA
20 to file suit against MSHA, which is our friend? I hear
21 comments that it seems that MSHA does not care how many
22 people or how many coal miners contract pneumoconiosis
23 because they were in no hurry to fix the failed dust

1 sampling program.

2 When I'm asked that question and I explain to them
3 that MSHA is our friend, they're our buddies, they help
4 protect us, and they read the proposed dust rules and they
5 ask me well, does it look like it in the proposed dust
6 rules, it's hard to come back with a good answer for them.

7 Ladies and gentlemen, let's not kid ourselves.
8 There actually isn't an MSHA takeover of the operator
9 controlled respirable dust program. It's actually just flat
10 out eliminated. What the MSHA proposal is wipe out all
11 operator compliance dust sampling requirements contained in
12 Part 70 of the regulations, and there are no replacement
13 regulations.

14 The committee recommended that sampling be
15 increased, that the compliance sampling be carried out at a
16 numbered frequency, at least the same level currently
17 required of operators in MSHA and that MSHA explore all
18 possible means to secure adequate resources without adverse
19 impact to other agency resources and responsibilities and
20 that any resource constraints in MSHA be overcome by mine
21 operator funding.

22 Again, instead of increasing compliance dust
23 sampling in the coal mines to protect miners, the proposed

1 rule dramatically decreased the frequency of sampling, an 83
2 percent reduction.

3 Following our review of the MSHA proposals by the
4 UMWA health and safety committee specialists, including the
5 health and safety and legal departments of the mine and
6 health safety committees, which we have a total of four
7 committees at our local and we've all looked at it and it's
8 all been mind boggling to us, needless to say, we have been
9 able to determine one thing for sure is that the proposed
10 rules are fatally flawed and not in the best interest of the
11 nation's miners and in need of major changes.

12 While the proposed rules do provide some
13 improvements for miners, they are overshadowed by changes
14 that would be adverse to miners and some undercutting of the
15 Mine Act and health and safety standard protections. In the
16 years of hard work we have all done to reform the respirable
17 dust program, we were extremely disappointed with some
18 several areas of the MSHA proposals.

19 There is a loud call from all coal miners from the
20 proud State of Alabama to recommend MSHA to go back to the
21 drawing board and publish new proposals that follow the
22 recommendations of the federal advisory committee.

23 With that, I do end my speaking. I thank you so

1 much. If there's any questions, I'll be glad to answer
2 them.

3 MR. NICHOLS: Thank you

4 (Applause.)

5 MR. NICHOLS: The next presenter will be Ralph
6 Loney, UMWA.

7 MR. LONEY: My name is Ralph Loney, R-A-L-P-H,
8 L-O-N-E-Y. I'm a safety committee man of Local Union 2232.

9 We have about 95 people working underground at our
10 mines. Over half of them is mandatory ten hour work days.
11 When the MSHA people come to run dust samples, I try to --
12 them. Usually the starting time is 8:00 to 4:00. He turns
13 the pumps on maybe five minutes to 8:00, and he puts them
14 back in his box. Then he takes them to the section on to
15 the dinner hole and then distributes them out to the people.
16 That takes approximately 45 minutes. Around 3:15 he gathers
17 then back up again, proceeds to take them outside so he can
18 turn them off at 4:00 or 480 minutes.

19 In the meantime, the men is still in there two
20 hours in the face in two cuts of coal, two runs on the long
21 wall. That's approximately an hour and a half the men is
22 not even wearing a dust pump. In reality, the people that
23 we've got in our mines that's working ten hours a day is

1 only wearing them six and a half hours. As I said, after
2 the dust pump leaves the sections they've got to get two
3 more cuts of coal, two more runs on the long wall. That's
4 exposing them to more dust.

5 How can you justify an honest dust sample when the
6 men are still running coal while the dust pumps are in the
7 back of the jeep on the way back to the office? I don't see
8 why we can't have the people wearing dust pumps from portal
9 to portal to where they get honest and accurate readings of
10 the dust for the day that they're exposed to.

11 Thank you.

12 MR. NICHOLS: Thank you.

13 (Applause.)

14 MR. NICHOLS: The next presenter is Eric Barnes,
15 UMWA.

16 MR. BARNES: I guess you've been waiting on me.

17 MR. NICHOLS: How did you get this job? Are you
18 the rookie?

19 MR. BARNES: Yes, I'm the rookie. I'll make it
20 short and sweet.

21 My name is Eric, E-R-I-C, B-A-R-N-E-S. I've got
22 to get this scarf off. It's about to kill me.

23 MALE VOICE: We can't hear back here.

1 MR. BARNES: You can't hear me?

2 MALE VOICE: No.

3 MR. BARNES: Would you like for me to raise my
4 mask? You know, I've always wondered how it would feel to
5 be a pack mule, and I think I know now. Let me see.

6 I'd like to start the day by asking Mr. Nichols or
7 anybody else on the panel would you like to wear this the
8 rest of the day? I don't think you'd enjoy it. I've had it
9 on for about six hours now, and it's about to kill me.

10 I'd also like to say to these people that enjoy
11 wearing this or don't mind wearing these on the long walls,
12 I don't see how they get through the day. I really don't.

13 The mining industry representatives have
14 repeatedly urged MSHA to accept the use of airstream helmets
15 as an alternate means of complying with dust standards when
16 engineering or environmental controls fail or were not
17 feasible. MSHA has constantly acknowledged that airstream
18 helmets can be effective as an interim method of protecting
19 miners when properly used and maintained.

20 Now MSHA -- pardon me. I'm about to die here.
21 Now MSHA is proposing to permit under certain circumstances
22 the limited use of either airstream helmets or
23 administrative controls for compliance purposes under

1 typical mining conditions.

2 The degree of protection depends on the ability of
3 the airstream helmet to prevent dust from entering the
4 miner's breathing zone. To protect the miner, he has to
5 check the filter system, make sure the battery pack is fully
6 charged, which is one of these gadgets here, and make sure
7 he keeps the visor in a lowered position.

8 We all see how difficult that is, and this is in
9 an air conditioned atmosphere. I mean, I've been on long
10 walls, and the heat in Alabama, which that's where I work,
11 is anywhere from 100 to 105 right now, and it's almost
12 impossible to keep this visor pulled down for ten hours.
13 There's going to be some individuals downwind of that shear
14 for ten hours if we do it day in and day out.

15 There's virtually no positive pressure in the
16 airstream helmets. Dust may invade the miner's breathing
17 zone through openings along the side and bottom of the visor
18 in this area here. The tests have shown that getting the
19 best results out of this helmet is always face the air flow
20 direction. Now, that's going to be very difficult. Now
21 I've got to go down on the long wall face and face the
22 direction of the wind all day. That's impossible.
23 Impossible.

1 We also feel by having to use the airstream
2 helmet, our vision will be impaired by the design of the
3 helmet. My side vision is hampered right now. I can't see
4 my hand until now. We depend on that as our defense
5 underground. We have lots of different situations we have
6 to face every day when you're on the long wall face.

7 Tests have shown -- well, I've already read that
8 part. We also feel by having the communication problems. I
9 think a gentleman in the back said he couldn't hear me when
10 I had it down like this. That's also an element that coal
11 miners have to depend on. We have to trust each other and
12 rely on each other to tell us when there's danger. If we
13 can't hear, there's no way for us to protect each other.

14 Another problem with this outfit that I see is our
15 maintenance people. They're pretty much downwind of the
16 shear ten hours a day, and they're working on shields in
17 between leg jacks. I don't know if you people know what
18 those are, but that's a very difficult place to be. With
19 this on, I don't know how they could get in there with this
20 on. Well, I know what they'd do. They'll field strip it.
21 They'll take it off. There's no doubt in my mind.

22 And the weight of this. I don't know. It's got
23 to weigh 25 pounds. It's got to. If you don't believe me,

1 again I will let anybody on the panel wear it the rest of
2 the day, and I think you'll see what I'm talking about.
3 It's very uncomfortable.

4 The Mine Act required the engineering or
5 environmental controls to be in place to maintain respirable
6 coal mine dust at or below compliance levels. Section
7 202(h) of the Mine Act prohibits replacing engineering
8 controls with respirators for a good reason. If the mining
9 industry was not forced to use these controls, they wouldn't
10 do it. Sorry. I can't see. It's fogging up.

11 The proposed rule allows the mine operators to
12 replace engineering controls with respiratory protection.
13 The UMWA would ask that MSHA go back to the drawing board
14 and publish new proposals that follow the recommendations of
15 the federal advisory committee. Please try to imagine what
16 coal miners are facing day to day in the workplace; the
17 danger we have to face.

18 Don't let this airstream helmet be a substitute
19 for environmental control. We need engineering devices. We
20 need worker friendly dust monitoring like the PDM-1. This
21 unit is the PDM-2.

22 Also, hearing protection. There's no way to use
23 this. This is the one I prefer. I've used these for years.

1 We've been limited. With this gadget on, we've been limited
2 to just the earplugs. I can't find a way to put it on, you
3 know. It just won't happen. It's not big enough.

4 Any questions?

5 MR. NICHOLS: Yes. Which Jim Walter's mine do you
6 work at?

7 MR. BARNES: No. 5.

8 MR. NICHOLS: No. 5. I would expect that there's
9 some number of miners that choose to wear the airstream
10 helmet because they like to wear it?

11 MR. BARNES: I think we tried it at No. 5. It's
12 been years ago. I talked to one employee. I can't --

13 MR. NICHOLS: Well, is it safe to say that at some
14 places Jim Walter's miners choose to --

15 MR. BARNES: I don't think any of Jim Walter
16 miners use these.

17 MR. NICHOLS: Okay.

18 MR. BARNES: This outfit.

19 MR. NICHOLS: Well, is it safe to say that
20 somebody in Alabama uses them?

21 MR. BARNES: Maybe in Alabama. Not with, you
22 know, the air we have to have on the faces to keep the
23 methane.

1 MR. NICHOLS: Okay. And MSHA has never considered
2 them an engineering control anywhere on the long wall face.
3 All we're saying in this rule is that if you can't engineer
4 out the problem downwind of the shear, we would consider it.

5 Now, does everybody who works at No. 5 working
6 downwind apply to the two milligram standard?

7 MR. BARNES: As far as I know. I'm not sure. I'm
8 not sure.

9 MR. NICHOLS: That being the case, you won't be
10 wearing any airstream helmets.

11 MR. BARNES: Well, until you raise the milligram
12 standard.

13 MR. NICHOLS: We're not going to raise it. If the
14 problem has been solved by engineering controls, then
15 companies need not petition MSHA for the use of airstream
16 helmets.

17 MR. BARNES: Well, I think they will. I think
18 they will. I think they'll do that.

19 MR. NICHOLS: They can petition for anything, but
20 it won't be granted. If engineering controls are taking
21 care of the problem, it won't be granted.

22 MR. BARNES: Okay. Thank you.

23 MR. NICHOLS: Thank you.

1 (Applause.)

2 MR. NICHOLS: The next presenter is Dave Deerman,
3 UMW. Is Dave Deerman here?

4 How about Tom Sweeten?

5 MR. SWEETEN: Good afternoon. My name is Tom
6 Sweeten, S-W-E-E-T-E-N. I'm the chairman of the health and
7 safety committee for Local Union 1545. I'm here to let you
8 know we have coal mines in Illinois also. West Virginia and
9 Alabama have been prevalent so far, but I'm from southern
10 Illinois.

11 First of all, I'd like to comment on the airstream
12 helmets. I wasn't going to, but I've worked on the long
13 wall for nine years. I'm a roof bolter right now. Before
14 that I was on the long wall. That was an option for us.
15 The last gentleman asked one of you guys if you'd like to
16 put one on and wear it. I'd like to go a little farther.

17 We've got low coal there at times. Put one on and
18 crawl under that table for four or five hours, or, to be
19 like a repairman working downwind, put it on and crawl
20 inside the podium for four or five hours like we have to in
21 the shields. That's the facts on those airstream helmets.
22 I would not wear one.

23 We were lucky enough that they did do it with

1 engineering controls. I think what scares us bigger, the
2 most, is if the management decides they can't do it by
3 engineering controls then that's going to be a fall back
4 position for them. If they don't have that fall back
5 position, they'll figure out a way to do it. They always
6 have, and they always will.

7 I hate to see a fall back position such as that.
8 It's dangerous. As he mentioned, you don't have any
9 peripheral vision. It steams up. It was steaming up on him
10 sitting there. If you look, his head is indented right
11 there where the helmet was pushed in on him to keep it
12 tight, so I really think those are a bad deal.

13 I met Dr. Jones out in the hall a while ago, saw
14 her about two years ago. She came and visited our mine, and
15 the first thing she said was do you hate our rules, too? I
16 don't think any of us hate this rule, both rules, but I
17 think we've found a lot wrong with them. I think there's
18 some good in them, but I also think there's some bad.

19 A while ago it was asked of the committee or the
20 panel how many coal miners. No one held their hand up. You
21 mentioned that you had coal miners, experienced coal miners,
22 to draw on their experience in formulating these rules.
23 You've got a whole room full of them here, and that's what

1 we're telling you people now, you know. Believe us when we
2 tell you there's a lot wrong with this.

3 On the VPL, I think that stands for verification
4 of production level. That should have been approached, and
5 I brought this up in MSHA District 8. There's so much that
6 management can do to put the production level in their
7 favor. If they report production level, they might report
8 it as clean coal, but when the inspector comes and does his
9 dust sampling, they'll report it as raw coal.

10 At our mine right now, we're running 27 percent
11 reject, so that's going to be a 27 percent difference in
12 your reporting. We don't have any way. I, as the chairman
13 of the safety committee, or none of my committee men have
14 any way to verify what numbers they're turning in. Are they
15 turning in clean coal and then raw coal?

16 There's another problem. We flat at our mine. We
17 cut a ten foot box cut, and then you move over and slab six
18 feet to get your 16 feet. By their formula, if you don't
19 complete your slab cut you don't count that as production
20 footage. The next shift gets it. So what happens at our
21 place a lot of times, they'll do their box cut and then move
22 over to another cut during a sampling procedure, and they
23 won't count it. The inspector goes by what the section

1 foreman tells him his production footage is.

2 We go by footage, as opposed to tonnage, so we
3 don't know what formula they use, how many tons per foot.
4 Sometimes they say if you have a higher seam, of course,
5 you'll have more tons. They can wiggle that in the process
6 also. They'll say they have lower feet so you have lower
7 tonnage. If they have higher feet, they have higher
8 tonnage.

9 What we need, we need someone there, one of the
10 committee men, who is familiar with the situation at the
11 mine, at any mine, to have input into this, to have input on
12 how much the reporting, over reporting or under reporting.
13 That's really important because, like I said, it could be a
14 27 percent difference at our mine simply by using raw coal,
15 as opposed to clean coal.

16 Again, we don't need to take the foreman's word
17 for it. I think the inspectors are sent to the mine and
18 said that's what you should do. I think that the inspector
19 should measure it himself and then have a formula to figure
20 out how much coal they've run.

21 I think the committee recommendation, as Tom
22 Wilson said early on today, under Recommendation 16(i), I
23 think that should be followed, and 16(i) says the production

1 level should be 90 percent of the average production of the
2 last 30 production shifts, and MSHA should require the mine
3 operator to maintain the appropriate records.

4 The way I read it right now, and I believe it's
5 going to be the tenth highest out of 30 samples, and then
6 there's something in there which I'd for you to explain
7 about the 67th percentile. Again, I think that's going to
8 get us pretty close to the 60 percent we're at now, but I
9 don't understand that 67th percentile in there. Could you
10 explain that to me?

11 MR. SCHELL: Actually, what we're proposing is
12 higher than the advisory committee. The advisory committee
13 was recommending 90 percent of the average, okay, so you'd
14 have the high and the low average was about in the middle,
15 50 percent, so the advisory committee was proposing 90
16 percent of the average.

17 You might want to read those words back just to
18 make sure I quoted. it.

19 MR. SWEETEN: Yes.

20 MR. SCHELL: What we're proposing is higher than
21 the average, so we're going above what the advisory
22 committee recommended. Our statisticians tell us since
23 we're talking of the tenth highest production during a 30

1 day production shift, that is about the 70th percentile, so
2 if average is 50 percent we're talking about 70 percent, and
3 then we're asking for your comments if that's high enough.

4 We didn't do a good job of explaining that, but I
5 want to focus on that. What we're proposing as the
6 verification level is higher than that proposed by the
7 advisory committee.

8 MR. SWEETEN: Okay. You know, you guys have had
9 accountants, lawyers, doctors and probably an archeologist
10 or two writing these. I don't understand them. I've read
11 them. I've scratched a hole on the top of my head. You
12 know, I've read them four times, and I don't understand
13 them. Luckily we have Joe Main and Tom Wilson and Joe
14 Urbahn to explain some of these things to me, but it is
15 confusing. If I misunderstood that, you know, I apologize.

16 I'll say this in closing. For all of you guys up
17 here and a lot of them out here, it's a job. You guys have
18 been assigned to come up with new regulations for dust
19 sampling and to reduce the amount of dust that we're
20 breathing, but the people like me, I've got 26 years in the
21 industry. Most of us in here have over 25 years. It's more
22 than a job to us. We're fighting for our lives on this.

23 This isn't -- I mean, we're not here to knock

1 everything you're saying. We're here to let you know we're
2 fighting for our lives. We've got people, fathers and
3 brothers and mothers and sisters, dying of black lung or who
4 have already died, and that's what we're doing. That's why
5 we're wanting you guys to take a look at this and to listen
6 to what we're saying and try to take it to heart that we're
7 trying to help out other miners.

8 Someone mentioned a while ago everyone who spoke
9 so far has been a union miner. There's a lot of people out
10 there that don't have the protection that we have, and
11 they're still coal miners. They deserve protection from you
12 guys the same as we do.

13 Thank you very much.

14 MR. NICHOLS: Thank you.

15 (Applause.)

16 MR. NICHOLS: Is Dave Deerman back yet?

17 MS. KUEMPEL: I just wanted to make the
18 clarification that the dust advisory committee
19 recommendation of 90 percent was for the compliance
20 sampling, which is different from the plan verification, as
21 Ron pointed out, so those two really aren't comparable.

22 MR. SCHELL: In an effort not to confuse it again,
23 we are, when we do compliance sampling, we are saying that

1 we would do it at the level we're going into now at 60
2 percent of average.

3 The question was asked about the VPL, which is the
4 verification. There what we're saying is that we're doing
5 it at a level greater than the average. Did I totally
6 confuse you on that?

7 MR. NICHOLS: Tom Klausing will be the next
8 presenter.

9 MR. T. KLAUSING: My name is Tom Klausing,
10 T-H-O-M-A-S, K-L-A-U-S-I-N-G. Let's see here. I'm getting
11 older. I've got to put these specs on.

12 Before we go any further, I'd like to ask one
13 question on the thing that was brought up just a while ago
14 on the dust. You're saying you're wanting to increase more
15 than what the regs already say?

16 MR. SCHELL: What I'm talking about is the plan
17 verification, and the question was asked for Mr. Sweeten.
18 He didn't quite understand this 67 percentile.

19 The point I was trying to make is when it comes to
20 plan verification, we want that plan to be verified at a
21 high level, and through the discussion today I had the
22 impression that people were under the understanding that we
23 were going to approve that plan at less than the average. I

1 heard comments about 60 percent of the average, 90 percent
2 of the average.

3 The point I wanted to clarify is that when it
4 comes to the plan verification, we want that plan to be
5 verified above the average and significantly above the
6 average. Going back to what I said this morning, to us, the
7 key to protecting miners is to have a plan that works at the
8 parameters the operator has in the plan and at high
9 production.

10 MR. T. KLAUSING: Okay. Thank you.

11 My name is Thomas Klausing. I work in Local 2161.
12 I mine at Old Ben Coal, Zeigler Mine No. 11, Coulterville,
13 Illinois. I've been a local union president for about 20
14 years. I also have my state miner examiner papers from
15 Illinois, state mine inspector papers, hoisting papers, shot
16 fire papers, mine manager papers. I represent the people
17 that work at the mine.

18 I would like to take the opportunity to speak to
19 the board here for the proposed respirable dust rules.
20 MSHA, the United Mine Workers insists you go back to the
21 drawing board. The proposal is outrageous. When this
22 proposal it was brought up it was supposed to be better, not
23 a take away.

1 The advisory committee is also outrageous. Some
2 of the key points on page 3 and 4 eliminates the entire
3 compliance sampling requirements in Parts 70 and 90 with no
4 replacement rules for compliance sampling, dramatically
5 reduces the frequencies of shift sampling for respirable
6 dust compliance. Mining section compliance sampling would
7 occur only six shifts a year, outby work one time a year.
8 These are not even guaranteed by rule or funding.

9 Increase the dust exposure level above the content
10 in the Mine Act and the current standard. The proposal
11 would allow mine operators to double the two milligrams to
12 four milligrams on a long wall face, while the proposed rule
13 states that the exposed level would be two milligrams, three
14 and one milligram for Part 90 and outby intake samples.
15 MSHA's plans to allow them to reach 2.33 milligrams and 1.26
16 milligrams. These specific levels were not cited in the
17 proposed rules or the preamble. They were referred in the
18 preamble by a formula.

19 Permits mine operators to replace engineering
20 control with respirator protection or administration control
21 on long walls, which are prohibited by the Mine Act.
22 Enforcement of the MSHA proposal is too fuzzy, and miners
23 may not know what to expect. The proposed rule gives too

1 much discretion to the MSHA inspectors and the MSHA district
2 manager.

3 These are some of the problems that we've had at
4 our place. We have three continuous miners and two roof
5 bolters that are in and out of compliance all the time.
6 With the new proposed rule, we will be running them out of
7 compliance more, but what is compliance? There is none
8 under the new proposal. With the new proposal, there is no
9 rule that MSHA cannot cite the company for being out of
10 compliance. MSHA enforcement is only as powerful as the law
11 gives it to enforce the company, and the company knows this.

12 The United Mine Workers of America thought MSHA
13 was their friend, but this is no friend. We have been after
14 MSHA to get us more involved with the dust sampling for some
15 time. Now, under the new proposal, we have none that is
16 guaranteed. I have worked in coal mines for 23 years, and I
17 enjoy working as a coal miner, and I want to go forwards,
18 not backwards.

19 There was some stuff that was brought up through
20 some of the testimony that I just wanted to bring out that I
21 still don't quite understand. I've read it and read it
22 over, and it's just confusing.

23 Mr. Nichols said a while ago that they're not

1 raising the standards of two milligrams to four. It's only
2 in a certain area. The law now does not cover that. I
3 mean, it says if you're over two milligrams you get cited.

4 If they can't keep it under two milligrams, then
5 they need to do something with it; not put a doggone helmet
6 on him and send him to space. We're not going into space.
7 We're down there trying to work in an environment that is
8 close, closer than sometimes even you guys sitting together,
9 and ladies.

10 It is an environment that there's times it gets
11 frustrating, and with the new proposed rules it's just T
12 totally outrageous. I don't quite understand that. You say
13 that you're not increasing it. No matter how you look at
14 it, it's not in the regs now. To me, you're adding to the
15 regs by increasing it.

16 MR. NICHOLS: You're saying if something can be
17 done and should be done that it will. If there's an
18 engineering control that can be applied to reduce the dust
19 levels below two milligrams, that will be done.

20 Now, your statement about --

21 MR. T. KLAUSING: It did.

22 MR. NICHOLS: We will. Your statement about
23 increasing dust levels on long wall faces is totally

1 misleading. I've tried to explain that.

2 MR. T. KLAUSING: Well, I think there's a lot of
3 these rules in here that are misleading, and there's a lot
4 of them that we don't understand. That's what we're here to
5 try to bring across to you that we don't understand them.

6 MR. NICHOLS: And we've been trying to explain to
7 you the situation on long walls.

8 MR. T. KLAUSING: No. You just told us that
9 you're planning on taking that individual, and if there is
10 no correction, no way to correct it to get down to the two
11 milligrams or the four milligrams, then he has to wear that
12 until somebody finds out what they've got to do. Is that
13 correct?

14 MR. NICHOLS: That's correct. If there's a --

15 MR. T. KLAUSING: Now, is that in the regs now?

16 MR. NICHOLS: I think it's pretty well explained
17 in the preamble.

18 MR. T. KLAUSING: Not in the regs. This is
19 something that --

20 MR. NICHOLS: I mean, you folks have made that
21 point over and over about what ought to be in the rule
22 versus the preamble, and we've heard that comment.

23 MR. T. KLAUSING: Okay.

1 MR. NICHOLS: But what you're talking about here
2 now is the real live situation of either letting somebody
3 breathe dust or offering them some personal protective
4 equipment. If the solution is engineering controls that
5 will be applied, but if that's been exhausted rather than
6 let some miner continue to breathe excessive amounts of coal
7 dust we think that's a viable option.

8 Also, your comment about your continuous miners
9 being in and out of compliance and it would be out of
10 compliance with the new regs. I don't understand that
11 comment.

12 MR. T. KLAUSING: That's a good point there
13 because I got that brought up in here, too. MSHA is only
14 going to be taking six samples, right?

15 MR. NICHOLS: That's right. We're going to be --

16 MR. T. KLAUSING: There is a thing in there that
17 they would possibly take more. I understand that.

18 MR. NICHOLS: That's right.

19 MR. T. KLAUSING: But I'm talking about legally
20 them only taking up to a minimum of six samples, right?

21 MR. NICHOLS: That's the minimum number.

22 MR. T. KLAUSING: The company takes roughly around
23 30?

1 MR. NICHOLS: That's correct.

2 MR. T. KLAUSING: Okay. Now, most of our
3 citations that we've ever received is because of the company
4 sampling when they send them in, MSHA reads them, and
5 they're out of compliance. They get five days to get them
6 back in. They know if they don't get them back in the MSHA
7 inspector comes out there and cites them.

8 Most of the time -- I'm not going to say it
9 happens all the time -- when an MSHA inspector comes out
10 there and he takes his, there's not a citation going to be
11 wrote because they do everything according to Hoyle. They
12 take and water the roads down. They take and every time you
13 make a cut you back the miner out. You clean the scrubbers.
14 You make sure all your water sprays are up. Most of the
15 time they rock dust prior to even going in there because
16 they know that they're going to take their dust samples in
17 Unit 3 because it's time to take the dust samples in Unit 3.
18 That's just the way it is.

19 MR. NICHOLS: I think what you're missing in this
20 process is that MSHA is going to ask the operator to put in
21 their plan those controls they're going to use all the time,
22 and we're going to verify that those will work so on a daily
23 basis the mine operator, the safety committee the inspector

1 can look at those plans and see if those controls are in
2 place. If they're in place and the plan has been verified,
3 I think you can make some assumption that you get compliance
4 day after day after day after day is what we're looking for.

5 MR. T. KLAUSING: Yes, but what's to say when MSHA
6 comes out there and does their thing underneath these new
7 regs to get their start in there, you've got your plan
8 verification, okay? You've already worked your 30 days or
9 whatever. Meanwhile, while they was working these 30 days
10 in order to get their quota as far as their tonnage is what
11 you're going by on this, I imagine, they did exactly what I
12 just told you. They didn't run the unit that day. They're
13 sampling in here.

14 They're getting the production on this day here.
15 They've got the unit spotless. They've got everything rock
16 dusted. They don't have to rock dust in there on the shift
17 that day. You've got the roads all watered down, the whole
18 nine years, the scrubbers all cleaned. You've got 110
19 sprays working on there. You ain't got 45 today, but you've
20 got the full 110 working on there, and then now you're
21 turning around, and we've broke a production record, okay,
22 for that time. We're at high tonnage right now, so that's
23 added in.

1 Now you've got your criteria of your plan
2 verification or whatever, I take it, and this is what MSHA
3 is going to go by their standards, unless I'm
4 misunderstanding this or something. It's the same way.
5 It's the exact same way it is right now. There's ways to
6 get around it, and that's how they do it.

7 I work in a coal mine. I used to be a mine
8 operator. I know how it takes. When you take a dust
9 sample, he should wear it. The individual hangs it up on a
10 curtain where the air is blowing down there. He's not in
11 there getting the doggone dust on that doggone pump. It's
12 sitting up there hanging in fresh air all the time.

13 MR. NICHOLS: Are you arguing for operator
14 sampling or against operator sampling? You know, on the one
15 hand --

16 MR. T. KLAUSING: I don't have any problem with
17 operators sampling. I mean, they keep continually cheating
18 or whatever. We take our safety committee, which we are a
19 union mine, and, God forbid, I feel sorry for the non-union
20 people that don't have the rights that we have under some of
21 these rules that are proposed here.

22 Any time they take a dust sample since we found
23 out they was doing all this fraud stuff, you know, back in

1 -- when was it -- the late 1990s or early 1980s or whenever
2 that took place. When they started doing that, we started
3 taking cassette numbers. Any time they'd take a dust sample
4 and we'd get the reading back from MSHA, we make sure the
5 cassettes match. That's how we keep track of ours.

6 No, I have no problem with the company doing their
7 own sampling. More power to them. At least they're held
8 responsible for it. They're held accountable for it. Now
9 MSHA is taking the brunt of it, and it just blows my mind.

10 I think that concludes my statement. I did enough
11 patcheting towards you guys and ladies. I T totally
12 sometimes feel sorry for you being up here. I know how it
13 is. You're in the front line.

14 I do appreciate MSHA because without MSHA we would
15 be back in the stone age then. You'd be back down there
16 with no scrubbers or no dust control or no ventilation, no
17 roof control or nothing, you know, but you've got to realize
18 that there is mines that are out there that are still
19 working underneath that, and your MSHA inspectors can tell
20 you that.

21 From the stories that they've told me, you know,
22 they try to go to a property to shut it down, you know, that
23 day so they don't have to inspect it, you know. Why do they

1 do that? There's got to be a reason behind it. The reason
2 is they don't want you in there.

3 We do want MSHA to continue to inspect the mines.
4 We want MSHA to be able to give us a proposal that we
5 deserve, not something -- what really throws me is that you
6 hear so much about waste, you know, and I didn't really get
7 this until probably a few days ago, but this has been going
8 on for 20 some odd years that they've been trying to get a
9 proposal for dust. It just blows me, and I've only been in
10 the mine 23 years.

11 I've listened to the old timers, and I'm sure that
12 you guys have a time or two. And ladies. I don't want to
13 knock you ladies out or anything. They talk about you
14 should have been back there when you didn't have the
15 scrubbers in there, when you could put your hand right in
16 front of your face right there, and you couldn't even see
17 it, you know.

18 Them are the guys that these guys are talking
19 about that are dying because of black lung that the federal
20 government doesn't agree that they have black lung and the
21 companies don't agree to that, you know. They oppose it
22 against them. They were the people.

23 There's people today that are the same way. It's

1 not near as bad, but you still have the dust down there.
2 They don't come out of the mine the way we're sitting here
3 right now. They've got to be getting that dust from
4 somewhere. Where are they getting it? It attacks through
5 their skin down there.

6 I mean, the dust is still there. It's just not
7 near as bad, but we still need the dust control to be able
8 to stop that, and that's all we're asking, to be fair with
9 them and to listen to the people that you're going to hear
10 today.

11 Thank you.

12 MR. NICHOLS: Thank you.

13 (Applause.)

14 MR. NICHOLS: J.R. Patsey, UMWA?

15 MR. PATSEY: I'm J.R. Patsey. I'm from Local
16 1713. I work for U.S. Steel Mining Company, Pinnacle Creek,
17 West Virginia. I've been in the coal mines approximately 24
18 years. I've worked in the face. I've worked in the long
19 wall. I've run a motor for eight years. I've worked at the
20 preparation plant approximately seven years, and currently
21 I'm a mine examiner floor boss.

22 We appreciate what you're doing for the single
23 sample compliance. We've needed that for a long time, but

1 one of my big problems is this six shifts a year that you're
2 going to be doing your sampling with. We've got a big
3 operation in our mines, and it don't really affect us as
4 much as it would a small, non-union mine because I know at
5 our mines we've got a good safety committee man, and we've
6 got resident inspectors there.

7 We pretty well keep control on things, but these
8 small, non-union mines you've got nobody there to look out
9 for the coal miners. I've been in a few myself. You've got
10 to get down and crawl like this. You've got no ventilation,
11 no rock dust. The roof bolts, they'll send them out with no
12 top, no support at all.

13 It's a bad thing because if you've ever had a
14 brother or a sister or a dad or a grandpa get carried out of
15 the coal mines, you know, because he's dead or if you've
16 ever had somebody die from silicosis or black lung, I have.
17 It's a sad thing.

18 Another thing I'd like to mention is on this outby
19 sampling once a year. We've got a lot of areas at the coal
20 mines with belt haulage. Our mines is all belt haulage. We
21 used to have -- we've got several union brothers that never
22 received benefits, was lucky to have received benefits, you
23 know, 40 percent silicosis, worked on the belts all of their

1 working life.

2 You know, now you're wanting to reduce, you know,
3 to once a year is all you're going to sample the outby.
4 There's a lot more dust in this outby than what people wants
5 to admit to, and it's a big problem. Like at our operation
6 we've got 78 employees at our preparation plant outby on the
7 surface. We've got 41 members on the strip job outby on the
8 surface. If you've ever been outside when a wind storm
9 comes up, you've got 250,000 ton of coal in a stockpile
10 there. It will blow it for miles. I mean, it's unbearable.
11 You can't see.

12 Another thing. I know you've explained it several
13 times today, and it really sticks in everybody's throat
14 really. When I try to explain to the members at our mines
15 these milligrams of what you're proposing now, this 2.3 on
16 your regs on your milligrams there, you know. We've got
17 2.0. It's there. That's the law. That's what we've got to
18 deal with.

19 You know, if we've got a problem that we need to
20 raise it to 2.3, we need to lower the regs to 1.7. If
21 there's a variance there, they've got .3 there so they can
22 come in compliance with the 2.0. Don't raise it and put us
23 in more dust than what we're already in. I mean, I know

1 I've heard you say it several times today. We're not going
2 to raise it. If you go from 2.0 to 2.3, you are raising it
3 any way you want to look at it.

4 I ain't going to get into the airstream helmet
5 because we've heard it today. I wore one.

6 MR. NICHOLS: I appreciate that.

7 MR. PATSEY: I wore one, and it's been beat to
8 death. The guys is right. You need to stick one on and
9 wear it for awhile.

10 Like our mines, you've got to crawl. You know,
11 we've got a long wall, a 1,000 foot face. The height is
12 probably about like this. You're on your knees all day
13 long. If you've ever gone down a long wall and seen that
14 long wall come by you, you know, you can't see nothing when
15 it goes by. It's pitiful really, you know.

16 Another thing that Rick mentioned there was about
17 the conditions in the mines, you know. You may be running
18 good one day, you know, no rock, no nothing. Then all of a
19 sudden you hit a middle man, nothing but rocks. You know,
20 that quartz, that's going to change your condition, you
21 know, but yet you ain't going to be there but that six times
22 a year. Who's going to be there when us miners is there
23 mining that when we hit that fault and rock. You done gone.

1 You done did your six samples. Nobody is going to be there
2 to protect us.

3 About all the laws we've had today, you know,
4 somebody has had to lose their life for it or it would never
5 become law, you know. That's a fact. You know, I preached
6 at you. You give me the opportunity to sit up here and
7 speak before you. I'm not going to take no more of your
8 time because I know we've got a lot of people that's got
9 things to say, and I appreciate it.

10 MR. NICHOLS: Thanks, J.R.

11 (Applause.)

12 MR. NICHOLS: Larry Pasquale? Larry Pasquale?

13 MR. PASQUALE: Good afternoon. My name is Larry
14 Pasquale. I'm a UMWA member from Local Union 2133 in
15 District 20 in Alabama. I'm also a UMWA District 20 board
16 member. I would like to make a few comments and maybe ask a
17 few questions on the proposal.

18 After reading the MSHA proposed rule on dust
19 sampling and the advisory committee recommendation, I
20 started doing some thinking about other MSHA hearings we all
21 attended in the past through the years of our existence in
22 working in the industry. If you look back at some of the
23 history and some of the testimony, miners have testified

1 that they wanted to have dust sampling programs done by coal
2 miners, not the coal operators, because they didn't trust
3 the coal operators. Miners told the panel at other hearings
4 it was a mistake to continue to allow the operators to do
5 the sampling because the operators can and will falsify dust
6 sampling.

7 If you look at the advisory committee's
8 Recommendation No. 19, it talks about the involvement of the
9 miners and the miners' representatives under the 103(f) walk
10 around rights. I would like to ask the question today to
11 the people out here in the audience if they would rather the
12 miners, MSHA or the coal operators do the dust sampling.

13 MALE VOICE: Miners.

14 MALE VOICE: Miners.

15 MR. PASQUALE: I think that's the answer that a
16 lot of us would like to see. I'm not taking anything away
17 from MSHA, but I think the miners would do a better job to
18 protect themselves because they're the ones in that
19 operation mining that coal; not the operator, the miners.

20 Also, as a district board member I handle mine
21 construction in the district. I also know that in July of
22 1996, the president of the construction local, Mr. Tim
23 Burshel's testimony to the panel was why there was nothing

1 being down for construction workers. UMWA construction
2 workers do all types of work in and around the mines.
3 Nothing has been written to protect them, especially in the
4 shaft and the slope areas.

5 MSHA has said they will do something at a later
6 date. It's been four years since the July, 1996, hearings.
7 My question is what? If you look at the advisory
8 committee's Recommendation No. 14, it addresses the concerns
9 for the construction workers.

10 Again, I was a coal miner at the Oak Grove Mine in
11 Alabama. Prior to that, I was a coal miner with a U.S.
12 Steel mine, the Maybrick Mine in southwestern Pennsylvania.
13 I have roughly 15 years of underground experience. The rest
14 of my time has been working for the union either as a
15 district rep, a construction rep, and also as a regional
16 coordinator in charge of safety and health in the
17 Pennsylvania and West Virginia area.

18 I feel like I have some background and some
19 knowledge. I do some instruction. I'm a certified MSHA
20 instructor. Also, inducement training. I try to help our
21 people. What I've done Friday and Monday is I've talked to
22 the district office at MSHA in Birmingham and just asked the
23 question how many citations were written for respirable dust

1 at the Oak Grove Mine since August 1, 1999, to the 24th of
2 July, 2000. There was ten citations written for respirable
3 dust at the Oak Grove Mine.

4 One citation was written. The date issued was
5 9-15-99. The date it was terminated was 10-28-99. That's
6 43 days. Another citation was written on 10-13-99. It was
7 terminated on 12-1-99, 49 days. Another citation, and this
8 one really bothers me, was written on 4-20, 2000. It was
9 terminated 7-20, 2000, 91 days. The list goes on. I wish I
10 had a copy. I should have brought a copy for your
11 gentlemen, but I didn't.

12 Coal miners today feel MSHA and the coal operators
13 are selling them out by the proposals of the new dust
14 sampling, but enough negatives. Let's talk about a little
15 bit of positive today for a change. If we would all work
16 together, for the health and welfare of the coal miners, a
17 lot could be accomplished.

18 Look at the money being spent having hearings to
19 weaken the dust sampling program. Let's look at the
20 technology that's available by both MSHA and NIOSH. There's
21 good statements made. The technology can be used to monitor
22 dust levels, but it will take government regulations to make
23 it a reality.

1 We don't want to hear another promise for another
2 20 years. The technology for machine mine continuous dust
3 monitors to provide instant information on respirable dust
4 and record data over extended periods is available and
5 feasible. Read the advisory committee's No. 8
6 recommendation. It calls for development and use of
7 continuous dust monitors for compliance surveillance and
8 controlling dust.

9 If you look at the gentleman who spoke a little
10 bit earlier, Mr. Barnes, he asked this panel if somebody
11 would want to put it on. No one took the opportunity to put
12 that gear on. Just pick it up, if he wouldn't mind coming
13 up and taking it off and letting one of you gentlemen pick
14 it up and see how heavy it is. It's roughly about 100 and
15 some odd pounds. I picked it up last night.

16 We need rules to protect the coal miners from coal
17 dust, a rule requiring the use of modern technology that's
18 waiting to be used to save poor miners' lives, to protect
19 them from getting black lung. This panel needs to listen to
20 what has been said in all the hearings that we're having now
21 in Morgantown, today, tomorrow, in Utah, and the past
22 hearings and go back to the drawing board and follow the
23 advisory committee's recommendation.

1 Remember, Congress' intent in passing the Coal
2 Mine Act Health and Safety Act is clearly spelled out in the
3 Act's first sentence, "To protect health and safety of the
4 mining industry's most precious resource." That's the coal
5 miners sitting out here because we, and I consider myself a
6 coal miner, hold the operators, the government bureaucracy
7 and the Administration accountable.

8 I thank you for your time.

9 MR. NICHOLS: Thank you.

10 (Applause.)

11 MR. NICHOLS: William Chapman?

12 MR. CHAPMAN: My name is William Chapman. I am
13 with the United Mine Workers, president of Local 1793.

14 With the machines being used to mine coal in
15 today's modern day mining, there's more dust in the mines
16 today than ever before. In a 30 year span of time, there's
17 been over 55,000 deaths attributed to the black lung
18 disease. In the past ten years, over 13,000 have died from
19 this painful disease. Painful, yes, because you smother to
20 death, or you overwork your heart and cause congestive heart
21 failure.

22 So why would MSHA ignore the advisory committee's
23 recommendation and propose to raise the respirable dust

1 level and reduce the number of dust sampling tests? The
2 proposed changes you all make would greatly increase the
3 miners' chances of being infected with the dreaded black
4 lung disease.

5 We, the miners, who mine the coal that affords 70
6 percent of this nation the luxury of electricity deserve and
7 demand a safer workplace and the peace of mind knowing that
8 MSHA is working with us and not against us. We urge for
9 more increased and stress dust sampling and a reduced
10 respirable dust level. This is why we urge MSHA to put in
11 place the advisory committee's recommendation, which
12 includes miners' participation, if we're going to end the
13 dreaded black lung disease.

14 Thank you.

15 MR. NICHOLS: Thank you.

16 (Applause.)

17 MR. NICHOLS: Rickey Kornegay? I probably
18 butchered that name.

19 MR. KORNEGAY: It's close. How are you all doing
20 this afternoon?

21 MR. NICHOLS: Okay.

22 MR. KORNEGAY: My name is Rickey Kornegay. You
23 was pretty close. That's spelled R-I-C-K-E-Y,

1 K-O-R-N-E-G-A-Y. I'm a third generation coal miner with
2 over 26 years working in strip mines, underground and
3 outside at an underground mine. I'm currently serving as a
4 UMWA District 20 executive board member in District 20 in
5 Alabama.

6 My opinion of MSHA's performance through my career
7 in the mines relates directly to a roller coaster. That is,
8 I started out thinking MSHA was one of the best
9 organizations around. Then in early 1996, I seen
10 enforcement all but disappear while the MSHA bosses bragged
11 in the newspapers about how much safer the mines were since
12 they came into town. Then I read the 1996 advisory
13 committee report, and once again I became very impressed at
14 the work that my government was doing with miners.

15 As I read that report, I couldn't help but be
16 impressed by how much thought had gone into identifying the
17 problems and finding the solutions. As I studied the 20
18 recommendations that the advisory committee had developed, I
19 could actually see how they all fit together towards solving
20 the problems.

21 I normally do not speak on health and safety
22 issues since I normally deal with contractual issues, but
23 since I was elected to represent the miners and after

1 reviewing MSHA's proposed rules, I knew that I belonged at
2 the mike today.

3 A person not familiar with MSHA's proposed rules -
4 -- any confidence in the dust sampling program because,
5 quite simply, MSHA only adopts a few of the advisory
6 committee recommendations, and MSHA failed to follow the
7 complete process of the advisory committee leaving serious
8 problems with these rules.

9 I have several issues that I would like to raise
10 at this time. Issue No. 1. The rules are made to reduce
11 the frequency of shift samples for respiratory dust
12 compliance. This is what the advisory committee
13 recommended.

14 Issue No. 2. The rules do not provide for paid
15 miner participation in MSHA's announced visits. The
16 advisory committee's Recommendation No. 6 stated that during
17 this verification visit, miners and their representatives
18 should have the same pay, 103(f) walk around rights, as they
19 do under MSHA inspections.

20 Issue No. 3. The rules all but fail to mention
21 continual monitors. I must ask what happened to the
22 advisory committee's Recommendation No. 8?

23 Issue No. 4. There was no intent by the advisory

1 committee to do away with all of the operator sampling. See
2 advisory committee Recommendation No. 5, operator
3 verification; also Recommendation No. 19(a) and (b).

4 Issue No. 5. The advisory committee's
5 Recommendation No. 1 states, "MSHA should consider lowering
6 the level of allowable exposure to coal mine dust." Now the
7 level is being raised. I've sat here and listened all day.
8 This I cannot begin to understand because the advisory
9 committee asked recommendations for it to be lowered. It's
10 going from two to 2.3. I don't keep up with all the
11 numbers, but if you go up it's going up, not down.

12 Issue No. 6. The advisory committee
13 Recommendation No. 5 states, "Environmental control measures
14 should continue to be the primary means of maintaining
15 respirable dust levels," and also states, "Respiratory
16 particular equipment should not replace these control
17 measures."

18 I know it's getting repetitive about Mr. Barnes,
19 but you saw him earlier today and heard him speak. I
20 shouldn't have to say any more.

21 To give companies a way out, you would not work as
22 hard to find a solution if you give them a way. If they
23 have a way out, they're only going to work as hard to find

1 the solutions to solve a problem. If you give them a way to
2 wear the airstream helmets, then that's a way out.

3 The flaws in these rules go on and on. I must ask
4 that MSHA go back and fix these rules. I remain very
5 disappointed that MSHA as an agency of my government, that
6 they did not.

7 Thank you very much for your time today.

8 MR. NICHOLS: Thank you.

9 (Applause.)

10 MR. NICHOLS: Shelly Branham?

11 MALE VOICE: He had to leave.

12 MR. NICHOLS: He had to leave?

13 MALE VOICE: He had to leave.

14 MR. NICHOLS: Eddie Castle? Eddie Castle?

15 Reggie Stallard?

16 MR. STALLARD: I'm Reginald K. Stallard, Local
17 1760, and I was wanting to ask a question about the super
18 section on eight cuts where we've got eight places. One
19 side gets four places, and we get the other four.

20 They require us to bolt one place per shift, and I
21 was wondering why they don't do dust samples, why we're
22 bolting that place in the dust?

23 MR. NICHOLS: George?

1 MR. STALLARD: Anybody?

2 MR. NIEWIADOMSKI: I'm not sure I understood.

3 MR. NICHOLS: Could you just repeat that again,
4 please?

5 MR. STALLARD: See, we've got eight headings, and
6 we're required to bolt one place in the dust per shift. I
7 was wondering why they didn't do dust samples on it.

8 MR. NICHOLS: While they're sampling?

9 MR. STALLARD: Like when the inspectors come.

10 MR. NICHOLS: Yes. They put the plum line where?

11 MR. STALLARD: They don't let us bolt when the
12 inspector comes in the dust for that, you know, one wall.

13 MR. NICHOLS: The big difference under plan
14 verification is that we're going to be sampling full shift.
15 The intent is to get those instances where, you know,
16 normally on the 480 minute sampling shift we might not do it
17 because we don't have total control over what actually
18 happens on a section.

19 MR. NIEWIADOMSKI: Are you saying that the
20 operator won't let you bolt when the inspector is there to
21 sample?

22 MR. STALLARD: No. He pulls us out. Don't go in
23 there he says. See, they're making it so they don't want to

1 get a bad sample.

2 MR. NICHOLS: I don't think it has anything to do
3 with the rule. I think it has to do with the inspector not
4 being able to figure out what's going on here. I don't
5 know.

6 MR. STALLARD: He tells us, you know, when the
7 inspector is there --

8 MR. NICHOLS: Have you talked with the inspector?

9 MR. STALLARD: Yes, I've talked to him. I forgot
10 his name. I'll have to get that.

11 MR. NICHOLS: Why don't you get it for us. I
12 don't think this is an issue with these rules. I think
13 that's something we need to work out enforcement wise.

14 MR. NIEWIADOMSKI: Where did you say you were
15 from?

16 MR. STALLARD: Cleveland, Virginia. I work at
17 Jewell Ridge Division.

18 That's all I've got. That's all I was wanting to
19 ask you.

20 MR. NICHOLS: Okay.

21 (Pause.)

22 MR. NICHOLS: How about Reggie Stallard coming on
23 up?

1 MR. STALLARD: That was me.

2 MR. NICHOLS: All right. How about William
3 Sawyer? All right. Sawyer?

4 MR. SAWYER: I'm here.

5 MR. T. KLAUSING: While he's coming up here, using
6 that same scenario that he had there just a while ago, under
7 the new regs if an MSHA inspector come in there and did the
8 same thing they still wouldn't let us bolt. Is there
9 anything MSHA could do to cite that?

10 MR. NICHOLS: Well, we keep coming back. I know
11 for a fact that some of you know how to file 103(g)s. I've
12 seen a few of them.

13 MR. T. KLAUSING: That's not the avenue for 103(g).

14 MR. NICHOLS: Well, we used to respond to a
15 telephone call, too.

16 MR. T. KLAUSING: I'm saying the MSHA inspectors
17 are in there while they're doing the test. He's in there
18 for ten hours let's say, if you can even get to the rule for
19 that. They still haven't bolted that place.

20 MR. NIEWIADOMSKI: There's nothing MSHA can do.

21 MR. NICHOLS: We're going to bolt to something.
22 Somebody else made a point that we're pretty well staffed.
23 I think this is a situation that's an enforcement situation

1 that can be worked out.

2 MR. T. KLAUSING: Yes, but it goes along with some
3 of the testimony that has been brought up in front of you
4 that this is the way that management plays the game.

5 MR. NICHOLS: Go ahead.

6 MR. SAWYER: Good evening. I'd like to thank the
7 panel for the opportunity you've given us as the mine
8 workers to come forward to testify and express our opinions.
9 My name is William Sawyer, W-I-L-L-I-A-M, S-A-W-Y-E-R,
10 safety committee, District 20, Local 1926 in Alabama. I
11 answer to Hacksaw.

12 First off, let me know if I make you ill. Tom
13 Meredith said he would deal with me personally if I do.
14 Coming from Alabama, we know him pretty good.

15 I'd like to start off by saying that we had a
16 quarterly safety meeting several years back in Alabama, and
17 there was a gentleman that came down that had a suit on, and
18 I didn't know him. It was during a break we got to talking,
19 and I told him. I said I had heard that somebody from the
20 Department of Labor or MSHA had made the statement that one
21 day you could go to work in the mines and realize that you
22 could return home as healthy as you was when you arrived at
23 the mines. I told him. I said I don't know what idiot that

1 was, but he needs to work in the mines. Well, that happened
2 to be Davitt McAteer, and he's the one that made the
3 statement.

4 As I read these rules, I wondered what has
5 happened to his theory? Now, I took a lot of notes and I've
6 heard a lot of information, and I hope I don't cover a lot
7 of it, but if I do forgive me because there's been a lot
8 presented. As I look through my notes, I know I'm going to
9 miss some. I usually do.

10 As I read this right here, I got this far in it
11 and I was lost. I attended the hearings up in Lexington,
12 and I think some of the testimony up there got lost, too,
13 ladies and gentlemen, because some of it I don't see here.

14 To start with, I'll start in the effective plans
15 and in the verification plans. You know, we like that, but
16 the fact is management is going to have the full
17 responsibility of setting it up to submit it to MSHA.
18 They're going to have the most recent 30 day production with
19 the ten most productive shifts as what they set it up on.

20 During the setting up of this plan, what bothers
21 me is what conditions our people are going to be in while
22 the company sets this up without the UMWA representation
23 there or MSHA representation there. As I understand it,

1 once they submit that they can receive a temporary
2 verification plan or temporary okay to go ahead until MSHA
3 can come out and do a compliance sampling. That could last
4 on to a longer period, which means that they will build out
5 and run under there parameters and under their ventilation
6 until MSHA shows up, which further increases the danger that
7 our people are in this dusty atmosphere.

8 Now, I know how it's supposed to be, and I know
9 once they get it set up and the compliance sampling is done
10 and everything is kosher, the compliance with the plan is
11 the second part you showed up. Each shift all these
12 parameters is to be checked and engineering means or
13 environmental means to make it safer and better has got to
14 be intact and operating.

15 My question is who is going to monitor this plan
16 for effectiveness? I know MSHA is going to do their one
17 sample bimonthly six times a year. During the time of this,
18 who's going to monitor, you know, in between the bimonthly
19 samples at the time they monitor? That's just a question.
20 You might want to answer some of them later. You may not.

21 The way I see it as a working miner, I see them
22 not doing their sampling, but they're still in control of
23 the situation until MSHA comes in on their bimonthly

1 inspection, and I see in this plan when they set that
2 verification plan the UMWA is not allowed to be part of it
3 to monitor it, yet it's for our people's health and safety.
4 That wasn't addressed in there.

5 The abatement. If for some reason MSHA comes in
6 and it's not working and MSHA does an abatement sampling, it
7 puzzles me because the abatement is a pre-warning. We're
8 coming in to do an abatement because you're out of
9 compliance. At that point, and I believe this has been
10 brought up. We're not guaranteed the right to travel with
11 MSHA.

12 All right. The checking of the plant before each
13 shift, which includes the dust parameters, the ventilation
14 and all, that is going to be left up to the company to make
15 sure it's in place. If it's in place, MSHA assumes that the
16 men will be working in a safe atmosphere.

17 Now, I don't throw it critically at you, but if
18 you haven't worked in the mines it changes from one hour to
19 the next. It will change that fast, and it takes the effort
20 of the men down there to create the situation. If they
21 can't, then they have to either come to the safety
22 committee, and if we can't get it corrected then we have the
23 103, which most of us don't know what that is.

1 That takes out from the previous regs or the regs
2 at the present. At that time a man could request for a dust
3 sample, okay? If I understand this new proposal, now we
4 don't have but one recourse. That's the 103(g). I need an
5 answer to that now. Am I right?

6 MR. NICHOLS: There would be no change in what you
7 want to request.

8 MR. SAWYER: I can 103(g) and get pretty much what
9 I want from MSHA, okay? What I'm saying is prior to that if
10 we had people on the long wall that were being put downwind
11 of the shear and exposed to dust, you know, I've been
12 involved when they've requested a dust sample from the
13 company. We want a dust pump down here now.

14 That's taken out of the scenario once this new
15 proposal comes in. They can request it, but by the regs
16 they really don't have the right for it. We're left up to
17 103(g) and get MSHA in to do a 103 dust sampling. Am I
18 right?

19 MR. NICHOLS: That's right. MSHA would do the
20 sampling.

21 MR. SAWYER: Right. Okay. That's taken one route
22 away from our people who we're here to represent.

23 Okay. Like I said, if I hit on something that's

1 been hit on forgive me. I won't stay on it long if I can
2 remember it was talked about.

3 All right. After the plan is approved, and what
4 I'm speaking of is not the sampling. I'm talking about
5 after the plan verification is passed by MSHA and everything
6 is supposedly intact. You all will do the bimonthly
7 sampling, but it may not be every bimonthly, okay? This
8 leaves the monitoring of this verification up to management
9 solely.

10 MR. NICHOLS: Well, management, the safety
11 committee, the miners. The plan will be posted. The miners
12 should understand the parameters in the plan, and all these
13 folks ought to be able to check it on a daily basis.

14 MR. SAWYER: Well, that's what bothers me because
15 we have dust parameters intact now, and I travel with our
16 inspectors down there a good bit. I would say eight out of
17 ten times we go to a section and it's a dust sampling shift.
18 That miner will be backed out, and they will be working on
19 the dust parameters on the miner, on the ventilation and all
20 this.

21 I know from my people it's not done. The dust
22 pumps are not handed out prior to the start of the shift. I
23 know that, so that makes me worry because we're putting our

1 faith in manmade installed engineering means that will
2 better the dust if they're maintained. Still, without the
3 dust sampling it bothers me how they can get out. They can
4 get out. They can be checked at first shift and get out
5 before the shift is over.

6 Okay. The outby sampling once a year. That
7 really bothers me, too, because it hadn't been long ago we
8 had ventilation changes that increased the ventilation
9 because everybody has got so much diesel outby. One of our
10 main gripes was, you know, the diesel emission, of course,
11 concerns us, but these diesels run at such high rpms, and
12 most of the exhaust is such a forceful exhaust. It kicks up
13 float dust, rock dust, sand dust, anything, because we run
14 our track next to our belt engine and our separator.

15 The way our mines is, if it ever gets into the
16 intake, which it can because we take our intake down our two
17 entries to our butt sections and our wall, then you're
18 putting that much more dust in there that your verification
19 plan might not cover it, okay, so that's more dust that may
20 be coming in on the sections. Okay.

21 MR. NICHOLS: How would that be different from it
22 coming in in between sampling cycles now?

23 MR. SAWYER: Because right now, well, you don't

1 never -- it's not predestined that they're going to run in.
2 You know, if they do their verification plan on the day
3 shift and that section is not serviced on the day shift --

4 MR. NICHOLS: I'm talking about the current
5 situation, not the new rule.

6 MR. SAWYER: Okay. The current situation, it's
7 still coming in, but they're taking dust samples pretty
8 regular, you know, right now, but under the new rule you'd
9 be taking one every bimonthly, and this could be happening
10 in between the bimonthly sample, which let me explain.

11 We had a miner section that got out. It took
12 everything we could do to get it back in because the dust
13 from the scoop, every bit of dust that was being emitted
14 outby that was making it in was having a big effect on that
15 pin there.

16 MR. NICHOLS: So your company sampled more than
17 bimonthly?

18 MR. SAWYER: They sampled a good bit on those
19 sections that run close. A good bit because it got to be a
20 problem the way head pinners sawed it for a little while,
21 and then it kind of messed up. They brought another one in,
22 and it got it back into compliance. We had a problem with
23 it for a while. We changed in our top, our material in the

1 top, and it got to be a more dry powdery type top.

2 What I'm saying is that there's situations -- not
3 just these, but there's situations that can make it change
4 just, you know, in a matter of hours, and with this
5 bimonthly sampling, you know, a lot could go on between one
6 sample and the next. Do you understand what I'm saying?

7 MR. NICHOLS: It can go on now between one sample
8 and the next.

9 MR. SAWYER: Yes, but you -- you're right. It
10 can, and it does, but there's samples being taken. There's
11 more samples being taken now, and it's picked up quicker is
12 what I'm saying. The men are exposed to it in a shorter
13 period of time, whereas if it happens on this new proposal
14 it could span out to a 60 day period plus before it's ever
15 detected.

16 The company may not even know about it under this
17 new proposal. That's what I'm worried about. It can
18 happen, and without as much sampling as what the company
19 does, if you take that away and then cut it down to what
20 this new proposal is comparably it's not a whole lot of
21 sampling to what's going on right now.

22 What I'm trying to say is we have a better
23 monitoring system right now than we would under the new

1 proposal. You have a full shift sample, which I agree on,
2 but you have less samples.

3 MR. NICHOLS: But you've got plans that have been
4 verified to work.

5 MR. SAWYER: Right. If they're maintained by the
6 company, which the samples is being maintained by the
7 company now except for MSHA's bimonthly.

8 So you're taking one thing, one responsibility,
9 away from them and placing another responsibility in their
10 hands. You're taking out the dust sampling. This is a
11 verification plan that you all are going to have on record
12 that they're going to maintain. Like some of my brothers
13 said, they'll be maintained pretty much when the inspector
14 comes. You know, you can bet on it.

15 I'm not saying there's no phone calls because I'm
16 around enough to know there ain't no phone calls, but by
17 wind or whatever, by the smell of a federal agent or
18 whatever, I guarantee you they will know something is going
19 on. I've seen it before. Inspectors I've went down with
20 have seen it before. It just happens.

21 Let me go on. I know that's done been hit on.
22 Okay. What weight does the preamble have in the protection
23 of the miner right now in this proposal?

1 MR. NICHOLS: When we -- I probably ought to let
2 the lawyer answer that so I don't get in trouble, but we're
3 looking at what was really intended by a standard, even one
4 that's promulgated years ago. We go back and look at the
5 preamble.

6 Do you want to say more?

7 MR. SAWYER: Make it to where I can understand it.

8 MR. REYNOLDS: Any time in the future when you
9 think of what the agency intended to do in a proposal or in
10 a rule, you always go back to the preamble, which has over
11 the years become more and more complicated.

12 Because of the fact that it was done at the time
13 the agency promulgated the rule, the Courts will generally
14 refer to what the agency says in the preamble because it's
15 very clear that's what they meant at the time they
16 promulgated the rule, so it's almost like if you can imagine
17 just a long series of footnotes to the actual text of the
18 regulation so that when you look at the preamble and you
19 don't understand a particular part of it, you can go back to
20 the section by section analysis or you can go to the
21 background description of the rule, and it will give you the
22 history in why the agency decided to do that. Then it goes
23 into a greater explanation.

1 There's been a greater move to do comments in the
2 preamble because of the fact that the rule making process
3 has gotten so complicated that once you put a rule in effect
4 it's very, very difficult for the agency to do anything to
5 change it, so if you wanted the flexibility in what you're
6 going to do in the future, generally the agency will put
7 more material in the preamble to explain.

8 If you look at the old rules, the old standards
9 that particularly MSHA promulgated in the early 1970s,
10 you'll find there's hardly anything in the preamble. In
11 fact, for the most part it just looked like they copied the
12 statute.

13 I understand all the comments here today. It's
14 not just MSHA, but it's true of any agency, any federal reg
15 agency, that the preambles have become more and more
16 complicated, and there has been a move to provide the
17 material in the preamble rather than in the reg, so it is
18 very important to have that material there, and it is relied
19 on by the Courts to show what the agency's policy would be
20 and what the agency intended to do. That's the effect of
21 it.

22 MR. SAWYER: I can understand that, but me as a
23 safety committee man, I can always take the reg down and

1 read it and pretty well know what MSHA had on their mind.

2 Going back to this preamble, it's kind of like,
3 you know, look back here for a reference, yet this reference
4 is back over here. It's a preamble, true, to the reg, but
5 it's outside the reg over here trying to explain what was to
6 be done in here, which I guess because I'm not a lawyer I
7 can't understand why you don't put it in simple terms in the
8 reg where the people that it's devised for to protect and
9 maintain a healthy and safe atmosphere can understand it.

10 I think that's a big question here today through
11 the whole thing. You know, why has it been written in the
12 proposal where me as Hacksaw, a safety committee man for 275
13 working miners, would pretty well have to contact a lawyer
14 to explain it to me?

15 MR. NICHOLS: Well, you said you didn't want to
16 plow old ground. That comment --

17 MR. SAWYER: Okay. Okay.

18 MR. NICHOLS: -- has been made over and over, and
19 we've duly noted it.

20 MALE VOICE: Tom, he ain't mad yet, though.

21 MR. SAWYER: Okay. Let me go on then.

22 MR. NICHOLS: My point is we've got 71 folks --

23 MR. SAWYER: Right.

1 MR. NICHOLS: -- signed up to testify, and we're
2 on number 26.

3 MR. SAWYER: Okay. I know. I've been sitting
4 back there all day long. Okay.

5 This one has been hit on, too, and I'll just make
6 a statement. We wanted full shift sampling for the miner,
7 but not an abatement sample. We wanted it on the
8 verification sample.

9 Okay. Why are we going, and this has been beat
10 on, too. I'll hit on another topic, airstream. I wore one
11 for two years on a long wall, so they're not nothing new to
12 me.

13 Okay. This is just a little information to try to
14 play down the airstream. Like I said, I'm from North River,
15 and we have a fairly new long wall system, okay? We got
16 into serious compliance trouble on our old wall while our
17 new wall was being built. We hit a stream bed, and the top
18 chain dragged. We had lots of forks and lots of dust.

19 Okay. We sat down. This was already being done.
20 We sat down with the inspector to go over ventilation and
21 all, and I was allowed to sit in with management. There was
22 a couple more MSHA reps there. We kind of suggested we'd do
23 on the old face what was being set up on the new face. This

1 stuff hadn't been built yet. We did, and it got us back in
2 compliance, got us out of trouble.

3 On our new equipment, management finally realized
4 that there is years of experience on their long wall faces
5 and on their miner sections, too. These people pretty well
6 know what causes dust, you know, other than the drum cutting
7 it out of the virgin face, so they allowed our people to go
8 with them, to go to the shield manufacturer in Germany, to
9 the shear manufacturer, you know, to the pump stations, to
10 everybody that was involved and have them set it up the way
11 they knew it would be best.

12 We have everything is high tech. Everything is
13 controlled by PLCs. They had several sprays put on the
14 shields that had never been put on before and did the
15 locations for the shield pullers, and the operators knew
16 that there was dust being generated every time that shield
17 moved. The shield was redesigned where it would allow more
18 of instead of a tunneling effect into the shields, more of
19 pushing air to the face where we wanted anyhow to keep the
20 dust out from the shield line.

21 The shear people realized that all these I guess
22 engineer designs, these dust parameters on the old shear,
23 had at one time worked, but now they were forcing the air

1 back over the handrail onto the people instead of making it
2 over to the face, so they redesigned that and changed that.

3 The water pressure. We had to check with Joy to
4 make sure how much psi could go through the drums without
5 rupturing the cutting motor tubes inside -- and found out
6 that they had been upgraded a long time ago to withstand a
7 whole lot more pressure than we realized it would, so we
8 increased the pressure on the drums. We changed the spray
9 orifices so we could get the mist instead of the volume so
10 we could knock it down. We used a wetting agent, and now we
11 have a long wall that runs really good in compliance.

12 This was pretty much engineering means suggested
13 by the people that worked on it day by day by day, and it
14 worked. There's just a wealth, you know. I don't want to
15 see the airstream throwed in there. I just really don't
16 because I wore it, like I say, for two years.

17 To let you know how good it went down there, when
18 we were first put under the 060, and we were the first one
19 in Alabama, it scared us to death, you know. We thought
20 well, we're going out of business. You can't run under
21 this. Through efforts from the men and company, we stayed
22 in the 060, and it's never been really a problem to us. Of
23 course, we don't generate the dust that some of those mines

1 do, but still we handle it.

2 Okay. A couple more things. In getting to where
3 we are today and where we are hoping to go in the future,
4 the traditional methods, and I'm speaking of the amount of
5 sampling plus we would like to see more, has helped us
6 assess the exposure to the respirable dust and has brought
7 us this far. Under this new proposal under the cut backs on
8 the sampling, it has done away with what I call the
9 traditional methods, and it's also completely forgotten the
10 continuous monitoring, which that's been talked about today
11 so I won't harp on that.

12 Like I said, Brother Barnes had the airstream on.
13 If you pick it up, it feels kind of heavy. If you sat in
14 here for eight hours, it gets uncomfortable. If you get on
15 a 55 inch face on a long wall and got the seal pulled up
16 tight, it makes it almost impossible to function in that get
17 up that he had on. You know, he explained to you a lot of
18 the disadvantages to it. They're there, plus more.

19 Okay. I'll tell you about a situation in our
20 mines, and it's a complete change from what this proposal is
21 to what happened to us two years ago. We changed our are on
22 the faces. We got scrubbers on our miners. We designed the
23 miners and put the scrubber on the other side because of the

1 way we was bringing the air in.

2 When we redesigned it, it put the scrubber point
3 out on the ram car operator's side. They stayed in
4 compliance on dust, but it blew on the rib, and they
5 received big chunks of coal, you know, and the bigger
6 particles of dust in the face.

7 We talked to MSHA about it. They suggested
8 plexiglass. It would last maybe four hours, and then from
9 the pressure of all this material hitting it it would be
10 scarred up so bad you couldn't see through it, so we came up
11 with airstream helmets, you know, to protect their face.
12 MSHA's pretty much direct words is you can use this for
13 protection, but you cannot use it for a means of ventilation
14 or to eliminate a man out of a dusty situation.

15 Now this proposal, and I understand what you said
16 about when you use it, but it's kind of swinging in left
17 field from what was told to us two years ago, which we
18 didn't want to use them for ventilation, but we were told we
19 would not be allowed to use them for ventilation to protect
20 the miner from any kind of respirable dust.

21 Okay. That's it. I've got a little statement I'd
22 like to say or read. As I said, there's been a lot that
23 went on today. We come to hearings like this to express our

1 opinions with the hopes that a panel of your calibre will
2 listen to us, the miners, who have the years of experience
3 and knowledge to testify to you of what would be best for us
4 for our health and safety, whether it be dust, diesel,
5 ventilation, roof control.

6 We now ask you to return to the tables, take into
7 consideration our testimony, our livelihood as it is, and
8 bring forth a proposed rule that we feel and know is put in
9 place to keep us healthy for ourselves and our families.

10 We've always looked to MSHA for help in our
11 continuing fight for a safer and healthier workplace. We
12 now ask you again. Please return to the tables. Look at
13 the miners' testimony and come forward with a rule that we
14 can live with.

15 I thank you.

16 MR. NICHOLS: Thank you.

17 (Applause.)

18 MR. SAWYER: I chew tobacco because this has left
19 a bitter taste in my mouth.

20 MR. NICHOLS: Tom Messer?

21 MR. MESSER: Panel, I was going to speak on that
22 subject Reginald brought up a while ago about --

23 MR. NICHOLS: You have to come up if you want to

1 speak --

2 MR. MESSER: Okay.

3 MR. NICHOLS: -- because it doesn't work well with
4 the court reporter here.

5 MR. MESSER: My name is Tom Messer. I work with
6 Reginald up at 1760. He brought that up a while ago about
7 the discrepancies of working in a place where they're taking
8 samples. I was wanting to speak on that. Do you want to
9 hear it?

10 MR. NICHOLS: Is it another --

11 MR. MESSER: Well, this is elaborating on what he
12 brought up a while ago.

13 MR. NICHOLS: I think you'd be better to take that
14 up with local law if it's a situation where --

15 MR. MESSER: Well, they're not doing anything
16 illegal. It's just -- I like that term they use -- cheating
17 legal. They're not doing anything illegal. It's just the
18 way they're going about it. There's nothing you can bring
19 charges or anything like that upon. It's just the way
20 they're going about it. Do you want to hear about it?

21 MR. NICHOLS: I think I've heard about all I need
22 to. The situation appears to me if we've got these charges
23 of fraudulent sampling and then we have a whole new set, a

1 discussion about legally cheating, sampling under best
2 conditions, but we will want to argue that this operator
3 program still has some merit. I'm a bit baffled by all
4 that.

5 MR. MESSER: Well, I believe what it boils down to
6 is everybody wants you to sample more often than what was
7 prescribed in the documents we've had. What they're doing
8 is they're kind of falsifying it, but they're not falsifying
9 it, what the operators are doing. I mean, these inspectors
10 come underground. They're not red hats. They can see
11 what's going on. Again, it's not illegal what they're
12 doing.

13 They're taking samples legal, but the boss will
14 have you in cleaner air where you're taking samples. The
15 next day when you go back to work you're right back in the
16 dust.

17 MR. NICHOLS: Well, doesn't that argue for what
18 we're trying to do here? We're trying to establish good
19 plans that work and do the compliance sampling ourselves.

20 MR. MESSER: Yes. We appreciate that, but what
21 we're trying to get is more sampling out of you.

22 MR. NICHOLS: We said that's the minimum.

23 MR. MESSER: Yes.

1 MR. NICHOLS: If we have problem compliance mines
2 or somewhere where we suspect that people are manipulating
3 the system, we would do more sampling.

4 MR. MESSER: Can you empower the inspectors to do
5 that --

6 MR. NICHOLS: Yes.

7 MR. MESSER: -- if they recognize that they have
8 been cheated on?

9 MR. NICHOLS: Yes.

10 MR. MESSER: Okay. That's what I wanted to ask.

11 MR. NICHOLS: Okay. Thank you.

12 MR. MESSER: Thank you.

13 MR. NICHOLS: Terry Hunter? Okay. Terry, you be
14 ready to go at quarter to 4:00.

15 (Whereupon, a short recess was taken.)

16 MR. NICHOLS: Go ahead, Terry.

17 MR. HUNTER: Mr. Nichols, panel, I appreciate the
18 privilege of getting up here and talking in front of you
19 all. I'm chairman of the safety committee for District 20,
20 Local 1926, the same mines Hacksaw is from.

21 As was said a while ago --

22 MALE VOICE: Your mike is off.

23 MALE VOICE: Turn it up. We can't hear you.

1 MR. HUNTER: How about now? I'll stand a little
2 closer.

3 I'd like to ask you a question on your sampling on
4 the six samples a year. How many samples would that be each
5 day? Like you come out one day. How many samples would be
6 in a day? You ask different people, and different
7 inspectors give you different answers.

8 MR. NICHOLS: Five, plus the DA near the section.

9 MR. HUNTER: All right. We've got a long wall and
10 two sections. You all would do one section a day, wouldn't
11 you, or would you do one each --

12 MR. SCHELL: Depending on how many inspectors.

13 MR. HUNTER: Okay.

14 MR. SCHELL: Basically one section a day.

15 MR. HUNTER: All right. The average would be 80
16 samples a year at that?

17 MR. SCHELL: You've got how many sections? Excuse
18 me, Terry.

19 MR. HUNTER: Two sections and a long wall.

20 MR. SCHELL: Times six would be 30. It would be
21 90. It would be 90 plus. It would be at least 30 on each
22 of the sections, so you have three sections. That's 90.

23 MR. HUNTER: Two sections and a long wall.

1 MR. SCHELL: Right, so it would be 30 on each of
2 the sections, so that's 60, another 30 on the long wall.
3 That's 90, plus any of the DAs that were near the section
4 like intake air or if you had a DA on a dumping point or
5 something.

6 MR. HUNTER: Okay.

7 MR. SCHELL: So it will be 90 plus.

8 MR. HUNTER: Ninety plus. All right.

9 Last year, in a year's time we had 486 samples.
10 That's your company and MSHA's inspection samples. As
11 Hacksaw said a while ago, like equipment going up the belt
12 line. With the company sampling more often and you all
13 sampling more often, they keep the roadway wetter. They
14 keep the track wetter to keep the dust down. If there ain't
15 as much sampling going on, they'll slide a little bit on
16 their wetting and get more dustier in the outby areas.
17 That's one of the concerns that we have.

18 We're glad you all want to take over the full
19 sampling. I went and got certified on noise and dust
20 sampling where I could watch the company make sure they're
21 doing their sampling right. I guess one of the reasons that
22 we would like to see more sampling than what you all propose
23 because your proposal is that many unless your funds get

1 cut, or you said that would be the least amount.

2 If you had more funding with more amounts, we
3 would be more likeable or more pleased with that result on
4 account of more sampling because the longer your samples are
5 apart it gives the companies a chance to slip by their
6 wetting because we're on that quartz standard. On our long
7 wall we're under a 1.6 standard on dust. On our L-4
8 section, we honor a .4 standard and our L-90 on the 1.0
9 standard.

10 MR. SCHELL: Terry, can I ask just a quick
11 question?

12 MR. HUNTER: Yes, sir.

13 MR. SCHELL: Is the requirement for wetting the
14 roadways was in the plan, wouldn't your operator do it every
15 day?

16 MR. HUNTER: Well, it ain't really in the plan.
17 That's something we come up with them. If we keep our
18 roadways down, it would keep our dust from coming up in the
19 sections because our air comes up, and we've been trying to
20 get them to keep it wetter. We've talked to our ram car
21 operators and our scoop operator about wetting their
22 roadways before they run in it to keep the dust down that
23 they was traveling in.

1 MR. SCHELL: But if they need to do that to be in
2 compliance, we pick that up in plan verification. Hopefully
3 we'd have that requirement in the plan so they'd be wetting
4 that roadway every day whether or not they're sampling.
5 That would be our goal.

6 MR. HUNTER: We have a hard enough time getting
7 them to do it now with as many samples as we've got. That's
8 some concern we have on the compliances and everything.

9 On your full shift like on your outby Part 90
10 miners, you brought your standards up to 1.3 or 1.23 for the
11 legal where you could find it and not throw it out. On Part
12 90, it doesn't classify the black lung. It would have been
13 better in his benefit if it had been brought down to 1.7.
14 Then if it got up to two it would have been a legal to fine
15 him, and they wouldn't have said nothing about it.

16 It looked like that there's more benefit to the
17 miners and the section if you had went down .3 on each one
18 he sampled. That way when they got up to two on the face,
19 they would have been citeable, or if it had been on the
20 outby and they got above a warning it would have been
21 citeable. Our concern is our mine people for dust if they
22 get in the outby face here.

23 I just made this map up to show you -- I'll let

1 you have it -- the sampling of the company. The company's
2 samples are in blue, and the federal is in red, the samples
3 they took from last year. That was from June 1 to May,
4 2000. I can leave this with you. You all can have it.

5 Hacksaw was talking about our long wall where we
6 put the sprays on top of the shield and on our jack springs
7 when we let down to move forward. We're afraid on some of
8 these companies that wouldn't go for this where they could
9 put the streamline helmets in they'd go to streamline
10 helmets instead of trying to come up with something to cut
11 down on the dust.

12 The way it is now, if you don't have nobody down
13 there below two percent if they got the right fuse on the
14 airstream they say well, we can't confine it. Let's get it.
15 They could put somebody down there for a little while to use
16 that.

17 That's one of the concerns we got that the
18 companies take advantage because I think many of these
19 companies are going to take advantage of anything they can
20 do, a loophole, because they've got better lawyers than we
21 have, and they understand this stuff better.

22 As Hacksaw said, you all wound up talking about
23 your own self, your own shift examiners of the dust

1 parameters. That's one thing that we rely mostly on the
2 foremen on the sections and the men when you all ain't
3 there. By working, you know, they're trying to get out the
4 coal. Sometimes they won't make a check on that.

5 If you go down to federal, like Hacksaw said, any
6 time you go to federal eight or nine times -- eight times
7 out of ten they've got the equipment back working on the
8 spray or something, so they know if they can get at least 60
9 percent of the coal production that sample will be reliable
10 on the production. That will cut down because nowhere in
11 your sample do you ever see 100 percent of production.

12 Every sample you see, the production is down the
13 least they can get close to that amount to make them legal.
14 Every once in a while they misjudge and a sample gets
15 throwed out because it didn't make it. If they all have a
16 belt go down or take an adjustment up on the take up just to
17 lower the production sample on that shift.

18 That's all I have to say.

19 MR. NICHOLS: Thanks.

20 (Applause.)

21 MR. NICHOLS: Okay. Gary Tramell? I passed over
22 him earlier. There he is.

23 MR. TRAMELL: Yes. I'm ready.

1 MR. NICHOLS: Are you Hacksaw?

2 MR. TRAMELL: No. Don't even call me that.

3 (Laughter.)

4 MR. TRAMELL: Those are nasty words.

5 Okay. I'm Gary, G-A-R-Y, TrameLL, T-R-A-M-E-L-L.
6 I've been hearing you all talk about the airstream helmets,
7 and I'm not going to go there. There's only one thing that
8 I want to tell you is that for a fact that for dust control
9 engineering controls are the best way that you can go, not
10 airstream helmets.

11 The reason I know this is because at our mines,
12 Jim Walter No. 5 in Alabama, we have had MSHA give us a
13 plan. Our approved plan that we have on our long wall face
14 is downwind exposure times. You all might be familiar with
15 that.

16 The first month that we took the sample, in the
17 very first month our miners was only allowed downwind one
18 hour. That gave our management an incentive to do better,
19 and due to that incentive they started adding water, using
20 engineering controls, more sprays, washing tops of shields.
21 They went to a big really reduction of dust, and they tried
22 real hard. At the end of six months, our miners was allowed
23 to go do for five to six hours on that same face, and that

1 just goes to show you that engineering controls is the best
2 way to reduce the dust. I can be done.

3 I heard Hacksaw mention it. They got about the
4 same thing with their mines. It's downwind exposure timing.
5 He just didn't go there with it, but engineering controls is
6 what I would like to see you all really think about and try
7 to -- you see my friend with the helmet on. That weighs a
8 lot in those faces. If you don't have nothing on by the
9 time you step over those relay bars and the toes of those
10 shields for about 180 of them, by the time you walk that 800
11 foot your legs are just completely gone with nothing on, so
12 if you was to wear all that weight you'd tell by what your
13 legs and your hips are going to feel like by the time you do
14 that six or eight times a day.

15 There was some questions. You come up with in
16 your introduction, Mr. Schell, you said something about the
17 -- let's see. That MSHA was going to give usa good plan
18 that worked every shift. I believe I heard you say that.

19 MR. SCHELL: Yes, sir.

20 MR. TRAMELL: Right away I was going well, he's
21 kind of talking my language about every shift. My language
22 is continuous monitoring, and I would like to see MSHA get
23 into continuous monitoring and getting real serious about

1 continuous monitoring.

2 That's something that engineering controls. We
3 can make it work with water. We can make it work with
4 continuous monitors. The biggest question that I've got is
5 out of the last ten or 12 years that we've been developing
6 the technology, why hasn't MSHA went further with that
7 technology to get it to a shape to where we could use that
8 in a coal mine?

9 Therefore, you cut down on your MSHA inspectors,
10 from what I'm understanding reading all those documents that
11 Tom got me to read. MSHA had a problem getting enough
12 people to do sampling, and if we could get continuous
13 monitoring in the mines then that would help MSHA come up
14 with a better control. I'd like to see that.

15 Could you comment on why MSHA has not pursued or
16 even in this proposed dust plan I see that in those hundreds
17 of pages that I helped Tom Wilson read I seen where you all
18 in your committees you touched on those subjects of
19 continuous dust monitoring quite a bit, but yet in these
20 proposed regs it's not there? Could you expand a little bit
21 on why you don't go there?

22 MR. NICHOLS: Well, we have pursued it, but we
23 don't think that we're there with useable technology.

1 MR. HEWETT: If I could expand upon that?

2 MR. NICHOLS: Paul? I'll let Paul with NIOSH talk
3 a little bit about that.

4 MR. HEWETT: Can you hear me?

5 MR. TRAMELL: Yes.

6 MR. HEWETT: Okay. My name is Paul Hewett. I
7 work with NIOSH in Morgantown, West Virginia. In the
8 development of the machine mounted continuous respirable
9 dust monitor, it was really started in the 1980s and on into
10 the 1990s and was taken over by NIOSH whenever the Bureau of
11 Mines was abolished or when the Bureau of Mines joined
12 NIOSH.

13 We can take it with that program and have found
14 that in the laboratory the instrumentation that was decided
15 upon and was targeted for use in the 1980s, which involved
16 direct on-the-filter sampling, something that would get --
17 the hope was to get something that would give you a closer
18 compliance sample. It was useable or worked fairly well in
19 the laboratory, but in the field test has just not proven to
20 be as reliable.

21 Reliability is a key issue here. Instruments
22 would fail within days or weeks after installation, and you
23 must appreciate mining is a fairly harsh environment.

1 Mounting a machine mounted unit on a continuous miner or on
2 the shear or somewhere along the pan line or whatever -- you
3 know, if it was on a shield that's a different issue. If
4 it's on a shear or a continuous miner, it's a very, very
5 rugged environment, and they just haven't survived.

6 Then there's the other issue of extrapolating the
7 measurement from a continuous monitor mounted somewhere in
8 by the operator and relating that measurement to the
9 operator. You're not going to have the same degree of
10 accuracy you would have with a personal respirable dust
11 monitor, you know, your pump and cyclone. For that reason,
12 these measurements are of doubtful use in terms of
13 compliance, but it might give you an indication of whether
14 or not controls are, you know, with too much dust and not
15 enough ventilation or not enough water sprays.

16 We made the decision to suspend research on the
17 machine mounted continuous respirable dust monitor that was
18 envisioned that started out in the 1980s and concentrate
19 efforts on another more reliable or a more promising
20 technology. We have some very bright engineers at the
21 Pittsburgh research lab that formerly worked for the Bureau
22 of Mines, now NIOSH, that have come up with some personal
23 respirable dust monitor technology that they're working on

1 and feel would give operators and minors indications of what
2 the exposure currently is and the shift measurement. You
3 know, at the end of the day you have a measurement rather
4 than waiting ten days, but these are still in development.

5 The technology is well, we can put a man on the
6 moon, and we've only done that a couple times, incidentally.
7 It's been a long time since we've done it. This is almost
8 as difficult. A methane monitor is simple by comparison.
9 The gas passes into a stationary sensor. Here we've got
10 moving parts, computerized sensors, and it's just not up to
11 snuff whenever it comes to the mining environment.

12 So while the dust advisory committee can say look,
13 it would be great to continue these readouts, getting there
14 has proven very, very difficult, so we've decided to
15 concentrate efforts in more promising directions and are
16 hoping to have something else fairly soon on that, but it's
17 not available let.

18 MR. TRAMELL: Thank you. Being that the situation
19 is that we're kind of at a stalemate at technology with the
20 continuous monitoring, in this plan the dust control plan,
21 you all don't hardly mention it. When you do get that
22 technology, will you bring it forth, or will you put
23 something in this plan that might govern when it comes into

1 some that is useable?

2 MR. NICHOLS: I see that as being something for a
3 future rule making.

4 MR. TRAMELL: Yes. Okay. I've heard everybody.
5 I'm not going to take a lot of you all's time, but I just
6 want to ask you one more question.

7 MR. NICHOLS: Okay.

8 MR. TRAMELL: Being that all of us coal miners has
9 come down here to honestly tell you all that the plan that
10 you have now, the dust control plan, is something that we
11 really have some problems with and after all the testimony,
12 and I know we hadn't gotten through yesterday, but I want to
13 ask this question now to see if we've got to keep you all
14 here another couple of days.

15 Have we said anything to you all as a panel that
16 has made you think about changing some of these plans from
17 the original ones? Have we said, the people that you heard
18 so far, anything to make you change your mind?

19 Okay. I'll have to go on.

20 MR. REYNOLDS: I'll be glad to answer this. Part
21 of the reason we're here is to get your comments, and part
22 of the proposed rule process is to do just what we're doing
23 here.

1 We will always consider your comments when we're
2 revising upon, you know, -- I mean, when we move toward a
3 final rule or maybe even a re-proposal, but I think we have
4 to take everybody's comments into consideration when we're
5 doing that. Whatever we do, we'll fully explain it in our
6 favorite topic, the preamble, of the next document.

7 MR. TRAMELL: I've heard that.

8 MR. REYNOLDS: One thing I did want to ask you
9 while I've got the mike is on page 42138 and 42139 of the
10 preamble there is a discussion of what we would expect an
11 operator to do if they were willing to work with us on
12 continuous mining monitoring technology and what things we
13 would expect them to have in their plan, so there is some
14 material in there. You just didn't find it in the preamble.

15 There is a discussion of other things that Paul
16 talked about in the preamble as well. It's on 42138 of that
17 big document.

18 MR. TRAMELL: Okay. Thank you.

19 MR. NICHOLS: That was not a no. We need to kind
20 of do a reality check here. We have 71 people signed up to
21 present comments. We just finished with number 25. I was
22 wrong earlier. I thought we were a little further ahead
23 with number 25.

1 We don't want to limit the comments of anyone. I
2 do appreciate the fact that people are starting to recognize
3 we've spent a lot of time on certain issues like airstream
4 helmets and the requirements are in the preamble and not in
5 the rule, outby sampling and some other things, and people
6 are starting to not be repetitious on that. I appreciate
7 that.

8 I think to get through the list of 71 people that
9 are signed up currently, and I don't know if we'll get any
10 more than that, we need to work later tonight in an effort
11 to try to finish up tomorrow, so I'd like to run until at
12 least 7:00 and see where we are then.

13 Now, at 4:45 we'll need to take a break, and the
14 motel needs to rearrange this room a little bit. We're
15 going to lose part of the back so we'll have to move up
16 front, but I don't see any way of getting through this
17 without working late at least tonight, and then it's
18 probably going to take a good chunk of tomorrow to get
19 through it, but to the extent you can if we spend a lot of
20 time on something how about hitting it a lick and then move
21 on? I'd appreciate that.

22 MR. T. KLAUSING: Are we going to get --

23 MR. NICHOLS: Say that again. You can't make a

1 comment without coming back to the table. You've already
2 been up here once. You're No. 72.

3 MR. T. KLAUSING: It was a wisecrack.

4 MR. NICHOLS: That was, too.

5 Okay. Edmond Cook?

6 MR. COOK: Edmond Cook. That's E-D-M-O-N-D Cook,
7 and I work for Peabody Coal Company in West Virginia. I've
8 been a miner for 31 years, and I just want to take a few
9 minutes. I want to make sure.

10 There's a lot I don't understand about it, but I
11 was glad to see, you know, talking about the simple sampling
12 because I know there's a lot of discrepancy that goes on
13 when you just take one or two people off a section and
14 sample them. There's people that will do anything with
15 these dust samples in order so they don't have to wear them
16 again.

17 You talk about the long wall. Our mine is a long
18 wall mine, and it is in compliance with the dust standards.
19 They had the helmets. The men didn't like them. They
20 buckled down, you know, and said hey, there's other ways
21 that we can do it without having to wear the helmets.

22 A lot of things worry me about this sampling
23 stuff. In the industry in the last few years there's

1 different work schedules. I'm just wondering if MSHA is
2 going to have a weekend holiday crew because we've got a lot
3 of people that work at our operation that never works during
4 the regular work week. They only work Saturdays and
5 Sundays, and so I just wonder if that's going to leave those
6 people out there that will never be sampled or never see an
7 inspector out there.

8 In our operation, just recently in the last week
9 or so they drove a tunnel from our rock prep plant through
10 the mountain to the Harris operation, which is in the
11 Maitwan seam, and they had to take approximately four foot
12 of top. We see in the paper that the mine foreman pleaded
13 guilty to dust fraud. For 18 months, those guys was in dust
14 from where they was cutting top, that rock and stuff, to
15 find out that he'd been hanging the samples, these
16 cassettes, in the intake.

17 I just kind of wonder where was everybody at for
18 18 months? When we took that over under our jurisdiction,
19 that about as filthy and dirty as any place you'd ever seen.
20 Like I say, last week he pleaded guilty.

21 Then you go back, and you're talking about this
22 dust sampling stuff. In the past six to eight months, the
23 increase when you come home from work. You stop in the

1 convenience stores and stuff. If you didn't know better,
2 you'd think you was in the '50s. The men coming out of
3 these mines are as black as they can be.

4 There's something wrong somewhere because, you
5 know, when the dust sampling first started you seen it
6 started getting better. The men wasn't near as black and
7 dirty as he was in the '50s, but now you see people coming
8 out of these mines that, like I said, if you didn't know
9 better you was in the '40s and the '50s. Something is wrong
10 somewhere and stuff.

11 Like I say, any step. We need you all's help, but
12 I think the company needs to be held responsible, too,
13 because you people ain't going to be there all the time.
14 It's a proven fact. If these companies can shed the
15 responsibility just to one agency, this thing ain't going to
16 work.

17 I know what black lung does. I had the misfortune
18 of having sat a couple years ago and watch my dad take his
19 last breaths due to black lung. That is a tough thing to
20 watch your parents pass away from black lung. I would just
21 ask that you take this thing and go back and listen to what
22 the advisory committee has recommended.

23 Thank you.

1 MR. NICHOLS: Thank you.

2 (Applause.)

3 MR. NICHOLS: Russell Thompson? Russell Thompson?
4 Chuck Wilson?

5 MR. WILSON: I'd like to thank you for the
6 opportunity. My name is Chuck Wilson, C-H-U-C-K,
7 W-I-L-S-O-N. I'm the local president at Council's Red Lake
8 Mine. It's Local Union 1545 in Sesser, Illinois, District
9 12. I'm going to be short and sweet.

10 My question is in our recommendations, the
11 advisory committee recommendations I should say, called for
12 full rights of paid participation in every phase of the
13 respirable dust sampling, verification and training program.
14 That included all compliance sampling, MSHA and operator
15 verification sampling, handling of continuous dust
16 monitoring devices, which we've talked about that, and
17 extraction of data and training of miners. You know, that's
18 recommended in No. 6, 16(a), 19(a), (b) and (c).

19 Okay. My questions are I think we've already
20 determined today that notified visits are not determined to
21 be an inspection. Am I correct?

22 MR. NICHOLS: No.

23 MR. WILSON: Okay. Preannounced? Are

1 preannounced?

2 MR. NICHOLS: I think what we said is any sampling
3 as part of this rule, miners would be entitled to walk
4 around pay. Is that right?

5 MR. WILSON: Okay. Any sampling under that rule?
6 Okay.

7 How about the miners' right to be a walk around
8 like during the company's verification process? Now, is it
9 insuring that we have our walk around rights then also?

10 MR. NICHOLS: Yes. MSHA would be doing the
11 verification. We'd be doing the sampling.

12 MR. WILSON: See, it was my understanding that
13 when a company -- if they're devising a plan, they also
14 would sample to see if their plan is going to work. Am I
15 correct?

16 MR. NICHOLS: They may, but this rule doesn't
17 require it.

18 MR. WILSON: It doesn't require it?

19 MR. NICHOLS: No.

20 MR. WILSON: Okay. I was assuming that they
21 would. Okay.

22 Are our rights covered under that to be with the
23 company basically when they're doing their verification

1 sampling?

2 MR. NICHOLS: No, I don't think they would be.

3 MR. WILSON: Okay. That was a concern there, you
4 know, as far as what the advisory committee, you know, had
5 requested.

6 Also, I have another question. I think Edmond
7 kind of hit on it. If we're getting ready to go on the
8 alternate schedule, Appendix C, in our contract and we're
9 also, you know, going to the ten hour shifts and also
10 they're going to have 12 hour production shifts on Friday
11 and Saturday. How is that going to affect the dust sampling
12 like when a person is in the dust for 12 hours? It's
13 definitely not going to be your eight times 60.

14 MR. SCHELL: I think there were three kinds of
15 sampling that we're talking about.

16 MR. WILSON: Yes, sir.

17 MR. SCHELL: The verification sampling that MSHA
18 is going to do, during that verification sampling that will
19 be full shift sampling.

20 MR. WILSON: Even if it's 12 hours?

21 MR. SCHELL: Yes, sir.

22 MR. WILSON: Okay.

23 MR. SCHELL: The second type of sampling is

1 compliance sampling, the bimonthly sampling. The proposal
2 is that that sampling would be 480 minutes. We've asked for
3 comments if it should be longer.

4 MR. WILSON: I think it should be myself. Like
5 myself, Tom and I, we'll be working ten hour shifts.

6 MR. SCHELL: Okay. That's the kind of comments
7 we're soliciting.

8 MR. WILSON: We'll be on tens, but they will have
9 two 12 hour production shifts on Saturday and Sunday, one
10 each day, as in our tentative plan for what we're going to
11 go to when we go to the alternate schedule, so they will be
12 mining 12 hours.

13 I'd like to request full shift compliance sampling
14 because realistically that's the amount of dust that we'll
15 be in is ten hours or more because we'll have changing out
16 at the face likely, so we're looking at ten hours and 45
17 minutes, and then, of course, there's no changing out at the
18 face on the 12 hours. They can't make them work past that,
19 but still they will basically be in the dust close to 12
20 hours.

21 MR. SCHELL: Just to finish that, --

22 MR. WILSON: Yes, sir.

23 MR. SCHELL: -- abatement sampling if they were

1 out of compliance. That also would be full shift.

2 MR. WILSON: Okay. We're just requesting, you
3 know, the full shift regardless of the amount of time, tens
4 or 12s. I would also urge you if possible we're requesting
5 the right to maintain our walk around rights when the
6 company does their verifying also.

7 I'm not going to hit on the airstream helmets
8 because I've tried to wear them before, too. They're bad.

9 Thank you very much. I appreciate it.

10 MR. NICHOLS: Thank you.

11 (Applause.

12 MR. NICHOLS: Is Russell Thompson back yet? Okay.
13 He's history.

14 Max? Max Kennedy?

15 MR. KENNEDY: Mr. Chairman, members of the panel,
16 my name is Max Kennedy, M-A-X, K-E-N-N-E-D-Y.

17 First of all, I live in the State of Virginia. I
18 hold a first class underground mine foreman certification,
19 among other Virginia coal related certifications, and I want
20 to mention this one panel because later I'll refer to it.
21 I've served on the MSHA panel under the direction of Jack
22 Tysdale to provide input on clear and gob ventilation
23 systems training modules now used at the mine academy.

1 I've been involved in several coal mine
2 explosions, mine fires and too many fatal investigations.
3 For the past ten years, I've been appointed by three
4 successive governors to serve on Virginia's Coal Mine Safety
5 Board. That board is the regulatory work group for the
6 Department of Mines, Minerals and Energy for the development
7 or revision of any of the state's regulations.

8 That poses -- it's similar, but different, because
9 it's state. It's not federal, but in rule making the rules
10 that we develop are similar with public hearings. We
11 consider all comments and address those comments in a rule
12 making process.

13 I won't hit on that again about the advisory
14 committee. I don't understand why. That's between you and
15 the outcome.

16 The reason I mentioned the panel that developed
17 that training model for bleeder systems and gobber is it
18 leads me to a question, and I don't think Ron quite answered
19 that question as far as one an operator exhausts all
20 engineering administrative controls for bringing a long wall
21 in compliance below the two milligram standard, he can
22 petition the Administrator of Coal for the interim use of
23 PAPRs.

1 Now, in your commentary it says the effectiveness
2 is in dispute as far as testing that's been done at lower
3 velocities versus velocities that are above 500 feet per
4 minute. Is that clear? Do I understand that they are more
5 effective in lower velocities, and once you get to 500 feet
6 per minute then that was the decision that you all signed,
7 the protection factor of two? Okay.

8 What about the extreme velocities that was
9 testified here today of 2,000 feet per minute? Is that
10 going to be still a fair protection factor for that unit?

11 MR. NICHOLS: I don't know.

12 MR. KENNEDY: Well, let me rephrase that. Let me
13 rephrase that. Are you going to accept or approve those
14 devices at those levels of velocities? It isn't clear in
15 the preamble commentary whether you will or whether you
16 won't. It only mentions the 500 feet, and then it's silent
17 as to whether or not you will or you won't above that.

18 MR. SCHELL: We would. They've been determined to
19 be effective above 500 feet for the protection factor of
20 two.

21 Max, in reaching that protection factor of two we
22 factored in raising the shield of velocity, so the way this
23 proposal is written if you had exhausted all engineering

1 controls for those workers working downwind of the 044, they
2 could go to either administrative controls or PAPRs. There
3 was nothing in this proposal that limited, put an upper
4 limit, on PAPRs because of the velocity.

5 MR. KENNEDY: It's still unclear in the
6 commentary. It insinuates that the approval was based --
7 you know, because of the high velocities, it just says
8 they're effective up to 500 feet per minute. It doesn't --
9 to me, you know, that's what I'm reading. I don't know if
10 I'm confused.

11 MR. NICHOLS: Did you want to comment on that?

12 MR. KENNEDY: What my question is is will you
13 approve them no matter what the velocity is?

14 MR. NICHOLS: We don't know.

15 MR. KENNEDY: Okay.

16 MR. NICHOLS: Let's talk about it.

17 MS. ROPER: If you look on page 42137, we talk
18 about some of the summary statistics for some of the studies
19 that we used, and we do talk about 1,200 feet per minute,
20 1,400 feet per minute, but we can look at the upper values
21 because there were higher velocities that were observed in
22 the studies with respect to estimating the protection
23 factor. We'll address that issue.

1 MR. KENNEDY: So that means that you will if
2 everything is exhausted and they can't get below the two
3 milligrams? Then you will consider any velocity?

4 MR. NICHOLS: I think that's right

5 MR. KENNEDY: Okay. I think you have solicited
6 for comments on that protection factor, but, first of all,
7 I'd like to know how you arrived at two when there were
8 testing done. You know, you still -- it mentions the
9 highest was I think she said 1,400 feet per minute.

10 MS. ROPER: That wasn't necessarily the highest.
11 That's how we chose to characterize it.

12 MR. NICHOLS: Do you know how we arrived at that?

13 MR. SCHELL: No.

14 MR. NICHOLS: Is your question how we arrived at
15 the two?

16 MR. KENNEDY: Yes. You know, I want to comment.
17 It says you're soliciting comments on that number for the
18 protection factor.

19 MR. NICHOLS: Yes.

20 MR. KENNEDY: I'm saying it's too high at two
21 because of the higher velocities.

22 MR. NICHOLS: Does anybody know how we arrived at
23 the two?

1 MR. NIEWIADOMSKI: The basis for us selecting two
2 is explained in here, and it's basically a factor of safety
3 built in. Based on the best information we have, we decided
4 we're going to limit it to a protection factor of two. It
5 was based on the highest velocity, so all the data that
6 we've had, all the studies that we've done.

7 Now, you're going to hear others indicate that
8 there should be a much higher protection factor, but we
9 decided we'll go with a factor of safety with the lowest,
10 which is two, and that's based on all the data that we have,
11 okay?

12 MR. KENNEDY: I'm still --

13 MR. NIEWIADOMSKI: So it's ten times lower than
14 what NIOSH is recommending.

15 MR. KENNEDY: Well, the high level -- the
16 testimony here today was that a long wall in my area from
17 Danny Sparks was 2,000 feet per minute down that long wall.
18 The commentary doesn't mention velocities that high for a
19 protection factor of two, and I'm asking that question.
20 Does two fit all, all the long walls out there?

21 My assertion is when you ask for a comment on that
22 protection factor, I'm saying that you can't fairly, and
23 you're saying of this best evidence that you have, assign

1 any protection factor until you have the data and the
2 figures for the higher velocities before you can do that.

3 MR. NIEWIADOMSKI: Max, that's a fair comment.
4 We'll look at that. I can tell you what we did was
5 summarize that data. We'll go back and take a look at that
6 data in light of your comment.

7 MR. KENNEDY: There is one thing that I'm glad,
8 and really I'm really not glad, but if you decide to proceed
9 with this rule as written and you do have this provision for
10 PAPRs and you assign a velocity factor or protection factor
11 and you limit that and only long walls with lower velocities
12 will be given the opportunity to apply for this, then you
13 may create an incentive for long walls that now have complex
14 bleeder systems that maintain pressures on the face line to
15 control the methane and the gob to go with lower velocities
16 on that face to gain this approval, which will create
17 another monster in that gob as far as ventilation goes.

18 So don't, you know, create a hazard for methane
19 build up by creating an opportunity for an operator who may
20 manipulate the system in order to gain this approval without
21 utilizing all administrative and environmental controls.
22 That's a point I need you to understand.

23 I'm not going to dwell on what's been testified

1 to, and I don't want to take up a lot of time of the miners
2 here that do have concerns. They sincerely ran across those
3 concerns as they did before the advisory committee, so this
4 is the second testimony that they've given on the same
5 issue.

6 It's still unclear to me and also to a lot of the
7 miners in the room of some of the answers given of the
8 questions that they asked validly, and that was one of the
9 questions the answer that was given was about the
10 verification production as far as the percentage of the
11 production for the verification sample was higher than the
12 recommendation made by the advisory committee.

13 That is what I perceived the answer to be for that
14 question that was asked. Can you clear that up for us so
15 that we all understand that?

16 MR. SCHELL: I'm going to try, Max.

17 MR. KENNEDY: Okay.

18 MR. SCHELL: I think part of that is probably my
19 fault for confusing production level during compliance
20 sampling with the production level during verification
21 sampling. What we are proposing for compliance sampling is
22 60 percent of the average. Right now operators use 50. We
23 use 60.

1 What I was trying to say is that when it comes to
2 verification sampling, we are looking at a production level
3 that is significantly above the average. We are not looking
4 at 60 percent of the average or 90 percent of the average.
5 We are looking at a number that is above the average.

6 Now, to try to quantify that, if you were to have
7 a continuum of zero percent to 100 percent and let's say 50
8 percent was the average --

9 MR. KENNEDY: Okay.

10 MR. SCHELL: Okay. On verification sampling, we
11 would be looking at the 70 percent level, not the 100
12 percent of the 50 percent level.

13 MR. KENNEDY: Okay. I thank you for making that
14 clear, and I hope that that clears it up for the rest of the
15 miners here.

16 The other question and the other answer. This
17 horse has been beat to death today, and that is the 4.0
18 milligrams. You've stated that this is not a 4.0 milligram
19 standard, but in essence it's a 3.9.

20 MR. NICHOLS: What I said was it's not a 4.0
21 standard for the entire long wall face.

22 MR. KENNEDY: Right. Right.

23 MR. NICHOLS: That's the impression you get of

1 hearing the comment. What I said was that you're looking at
2 the protection factor for the miners. For these miners that
3 are working downwind of the shear operator, it will protect
4 up to four milligrams. That's a far sight from saying we're
5 going to just carte blanche raise the dust standard four
6 milligrams.

7 Let's say somebody is overexposed at 2.7, and
8 there's absolutely no other way to get it down to two.
9 Well, that's not a four point standard. That's not a -- the
10 airstream helmet would protect in that case, but it wouldn't
11 be four milligrams.

12 Do you understand what I'm saying? The protective
13 factor of the airstream helmet --

14 MR. KENNEDY: And I think that's still in question
15 as far as that number, as far as the velocity.

16 MR. NICHOLS: Well, wait a minute. You're talking
17 about something different there. I'm talking about --

18 MR. KENNEDY: If you do assign that to that --

19 MR. NICHOLS: Yes?

20 MR. KENNEDY: If you assign to the protection
21 factor --

22 MR. NICHOLS: Right.

23 MR. KENNEDY: -- then in essence if they say that

1 I did all that I can do and now I'm going to submit this to
2 the Administrator of Coal, and if that number is two and you
3 decide it's two for all velocities then in essence in the
4 interim while the operator continues to demonstrate that
5 he's working on his administrative controls, he's working on
6 his engineering controls and then he utilizes the PAPRs,
7 then he does have a 3.9 milligram standard, and if he
8 doesn't exceed to the 4.0 he won't be cited.

9 If he is 3.9 when sampled, when compliance
10 sampling, he won't be cited, as I understand this. This is
11 a 3.9, and he is in compliance.

12 MR. NICHOLS: Well, that's correct, but you can't
13 take that and make a carte blanche that MSHA is raising the
14 dust standard to four milligrams on the long wall face.

15 MR. KENNEDY: For those long walls that have
16 applied and gotten approval for those persons working
17 downwind of the shear --

18 MR. NICHOLS: That's correct.

19 MR. KENNEDY: -- they are and will, if this is a
20 final rule, with that number two protection factor assigned
21 to that airstream helmet then that individual, his working
22 environment is and can go up to 3.9 --

23 MR. NICHOLS: That's correct.

1 MR. KENNEDY: -- and be in compliance.

2 MR. NICHOLS: That's correct, but a lot of the
3 testimony was just open ended that MSHA is raising the dust
4 level to four milligrams on the long wall face, and that's
5 not correct.

6 MR. KENNEDY: I think that everybody understands
7 what was said just then, and they understand that individual
8 on that long wall, his exposure will be increased, but he'll
9 have a protection factor if it's two.

10 MR. NICHOLS: Only after all the other controls
11 have been exhausted.

12 MR. KENNEDY: Okay.

13 MR. NICHOLS: All right.

14 MR. KENNEDY: Now, will all available data be
15 gotten to these operators to utilize these engineering and
16 administrative controls, all data that is present and in the
17 future before such approval is gained such as water infusion
18 if they don't water infusion at this time on the panel, such
19 as wet heads on the shear drums?

20 Will those be incorporated or required prior to
21 the extremes as the Mine Act says that those are time tested
22 and proven? Will that occur?

23 MR. NICHOLS: Well, yes. We've put together a

1 list of controls. We've circulated it for --

2 MR. KENNEDY: It says all feasible. You know,
3 this was printed. It's time tested proven, scientific data,
4 okay? It should be incorporated prior to any approval that
5 all methods should be exhausted prior to approval of
6 respiratory protection, just as the Mine Act says. Am I
7 right, or am I wrong?

8 MR. NICHOLS: Well, that's what the rule says that
9 all feasible engineering controls shall be exhausted.

10 MR. KENNEDY: There's one other thing I want to
11 clear up, and then I'll hush and let the miners speak, and
12 that is verification sampling and 103(f) rights.

13 You're saying that miners will be afforded 103(f)
14 rights when MSHA comes and does verification sampling. What
15 guarantee that they will have those rights and they won't be
16 challenged and they won't be stopped from traveling with
17 MSHA?

18 MR. NICHOLS: Well, it would be our intention to
19 put it in the rule and also, like anything else, I mean,
20 we'd issue citations.

21 Anybody got anything different?

22 MR. KENNEDY: The last thing I'll say is this is
23 the only part that an ALJ looks at when an operator contests

1 a citation. This they throw in the trash, so whatever your
2 comments are, they only look at the rule, so when you go
3 back whatever the rule is going to be, that's the only thing
4 a miner can hang his hat on.

5 Thank you.

6 MR. NICHOLS: Thank you.

7 (Applause.)

8 MR. NICHOLS: Do we need to break, Pam, and let
9 them rearrange the room?

10 MS. KING: Yes.

11 MR. NICHOLS: Okay. Let's try to be back at 5:00.

12 (Whereupon, a short recess was taken.)

13 MR. NICHOLS: Okay. Let's get started back. Is
14 Jim Brackner here?

15 Larry wants to make a comment on one of my
16 comments.

17 MR. REYNOLDS: I just wanted to me, and Max
18 Kennedy is not back yet, but at the end of his discussion we
19 had he was talking about the guarantee that people would
20 have walk around rights for all types of verification
21 sampling, verification sampling, abatement sampling and
22 compliance sampling.

23 In the preamble of the rule, it was our intent in

1 the way that we structured the reg that it was MSHA's
2 interpretation that walk around rights would apply for all
3 these types of sampling. It's on page 42134 of the
4 preamble. There's a footnote where it says that based on
5 our guidance and our interpretation of the statute that's
6 what we had intended in this rule making.

7 I just wanted to make clear that, and Marvin
8 reiterated that, it is something that we will consider in
9 developing the final rule that might be more appropriate to
10 put that into the text of the regulation, but we were going
11 to hear the comments from everybody that would be interested
12 in that, you know, at the rest of the hearings and also the
13 comment period. I just wanted to preface those remarks with
14 that.

15 MR. BRACKNER: Okay. Mr. Chairman, members of the
16 panel, I am Jim Brackner. That's J-I-M, B-R-A-C-K-N-E-R. I
17 work for Jim Walter No. 4 in Brookwood, Alabama in various
18 classifications, 20 years. I'm also a section committee man
19 for Local 2245.

20 I'd like to voice my concerns that even though the
21 preamble states the miners' reps will have walk around
22 rights during the sampling, thereby increasing miners'
23 confidence in the dust sampling program, the proposed rule

1 contains nothing that provides the miners' reps with
2 increased rights during the sampling program. I feel that
3 the miners' reps should be afforded the opportunity to
4 accompany MSHA any time they're on mine property and suffer
5 no loss of pay. It is part of the miners' reps'
6 responsibilities to aid in inspections.

7 I've seen times during sampling when someone would
8 bump an equipment operator out for lunch, and instead of
9 leaving the dump pump with the person at the controls the
10 operator would take the pump to the dinner hole. I've seen
11 times when sampling long walls when someone would be working
12 near the tailgate downwind of the shear without the 060
13 pump. If it had not been for the miners' rep calling the
14 inspector's attention to this, accurate samples would not
15 have been collected during the shifts.

16 As a miners' rep, I've spent enough time on MMUs
17 when they're not being sampled to know and to be able to
18 inform the inspectors when the unit is running under sugar
19 coated conditions. There have been times in the past when
20 inspectors doing the sampling will bring -- they did not
21 have AR cards and were not at all familiar with the
22 ventilation plans. Management knew this also and would have
23 taken full advantage of it had it not been for the miners'

1 rep. Also, the miners' reps can be a valuable link in
2 communication between fellow miners and MSHA.

3 Yes, it would increase miners' confidence in dust
4 sampling programs to a company, not only MSHA, but could
5 also be present and assist the operator in verification
6 sampling and in the training of miners as suggested by the
7 advisory committee.

8 The miners' rep participation in the dust sampling
9 program would help to insure that all aspects of the
10 sampling program are being carried out properly instead of
11 just being mimicked.

12 After reviewing the proposed rules, it's very
13 plain that the goals of decreasing exposure, stopping black
14 lung and saving lives don't seem to be as important to some
15 people. I'd like to take this time to urge MSHA to utilize
16 one of the most effective dust controls ever. That's the
17 coal miners and their reps.

18 It would also be our intention and I will also ask
19 that MSHA go back and increase the sampling in the proposed
20 rule, guarantee the rule with lasting funding and to take
21 the discretion out of their proposals.

22 Mr. Chairman, back to the statement you told Mike
23 earlier that it would be our intention to put that in a

1 rule. Please stick by that statement because we want to see
2 it.

3 MR. NICHOLS: Keep in mind, when I speak of a
4 rule, I speak of the whole package. I'm talking about the
5 preamble. I did not make a commitment to you to put it in
6 the rule. It is a commitment that will consider that.

7 MR. KENNEDY: Your statements --

8 MR. NICHOLS: I know.

9 MR. KENNEDY: Your statements --

10 MR. NICHOLS: As quick as it came out of my mouth,
11 I knew I was going to hear it.

12 MR. KENNEDY: It would be our intention to put it
13 in the rule.

14 MR. REYNOLDS: I just wanted to make it clear
15 that, you know, because of the nature of the rule we would
16 accept comments from everybody, and then we will address it
17 in, you know, the next document, whether it be a re-proposal
18 or a final rule. We certainly will consider everybody's
19 comments on that issue.

20 I just wanted to make it clear it was our intent
21 when we put this discussion in the preamble that because of
22 the nature of the way we structured plan verification and
23 the compliance end point for respirable dust, because MSHA

1 would be doing all of this it was our interpretation of the
2 statute that the well grounded rights would apply, but
3 apparently this is causing confusion.

4 It's something that we will address later. I know
5 there are several concerns. I can tell you one of the most
6 obvious would be to put it into the text of the reg.

7 MR. KENNEDY: Thank you.

8 MR. NICHOLS: Thank you.

9 I seen all you guys writing real fast when I said
10 that.

11 The next presenter will be Bill Caylor with the
12 Kentucky Coal Association. Bill?

13 MR. CAYLOR: Thank you, Mr. Nichols. I appreciate
14 you letting me go out of turn. My name is Bill Caylor, it's
15 C-A-Y-L-O-R, with the Kentucky Coal Association. I'd also
16 like to thank Mr. Wilson to agree to let me go out of turn
17 as I will not be here tomorrow. I could be here late
18 tonight, but I just could not be here tomorrow, and I
19 appreciate the opportunity to go out of turn.

20 We're making comments on this proposed regulation
21 on behalf of three coal associations in the State of
22 Kentucky, the Cooperators & Associates, the Kentucky Coal
23 Association and the West Kentucky Coal Association.

1 Collectively, these three organizations represent over 90
2 percent of the production in the State of Kentucky.

3 I'd like to comment on MSHA conducting all
4 compliance and abatement sampling. Most health and safety
5 professionals and coal operators favor MSHA conducting
6 compliance sampling of coal dust.

7 Over the past years, operator sampling has become
8 Catch-22 for operators. If an operator is in compliance,
9 MSHA and the newspapers say that cheating has occurred. If
10 an operator is out of compliance, then he gets cited by MSHA
11 and again is criticized by the news press. Either way, the
12 operator loses so in that regards, you know, we favor, you
13 know, that aspect of MSHA taking over the sampling process.

14 With regard to single full shift sampling, we've
15 got three different comments. First, we feel like the
16 single full shift sampling violates the law under previous
17 regulations. The Mine Act and the previous MSHA regulations
18 clearly address average concentrations of coal dust. MSHA's
19 current proposal for single shift monitoring ignores over 23
20 years of precedent in determining how coal dust should be
21 measured; that is, averaged.

22 The Mine Act, in Section 202(b)(2), clearly states
23 this. "Each operator shall continuously maintain the

1 average concentration of respirable dust in the mine
2 atmosphere during each shift to which each miner in the
3 active workings of such mine is exposed at or below two
4 milligrams of respirable dust per cubic meter of air."

5 In 1980, MSHA recognized that, "Congress
6 recognizes that variability in sampling results could render
7 single shift samples insufficient for compliance
8 determinations. Consequently, Congress defined average
9 concentration in Section 202(f) of the 1969 Coal Act, which
10 is also retained in the 1977 Act."

11 We feel that measurement uncertainty demands
12 reasonable backups. Because of the measurement uncertainty,
13 which involves, you know, physically taking the sampling,
14 the mechanical device itself and the location of the sample,
15 a lot of different parameters, we feel like the mining
16 community would like to make two requests.

17 First, the operator should be afforded the
18 opportunity to take a controlled sample for verification of
19 the inspector's sample. Second, the inspector should at
20 times, or upon a reasonable request, take a second sample
21 that needs to be sent to a lab other than MSHA's lab for
22 independent verification. I think those are very reasonable
23 requests.

1 The third comment under this area is on quartz
2 measurements being taken based on three samples. The day
3 quartz is sampled is very important, as we even heard
4 earlier in the testimony. There are many atypical periods
5 that impact the percentage of quartz in the mine atmosphere.
6 The ventilation may not be established. The operator may be
7 taking more rock in the ceiling, presser room and so forth,
8 again citing the examples we've heard earlier.

9 Three bimonthly samples are needed for each MMU.
10 This would comply with MSHA's language that states the
11 measurement accurately represents atmospheric conditions to
12 which a miner is exposed during each shift. This appears to
13 be the intent of MSHA, as reflected on page 42130 of their
14 preamble.

15 Defining concentration using an eight hour MRE
16 equivalent measure is flawed. Section 7.2(j), Definition of
17 Concentration, makes an eight hour MRE equivalent measure of
18 the amount of respirable dust per unit volume of air.
19 MSHA's definition of concentration, which is based on an
20 eight hour MRE equivalent measure, is an example of what I
21 would call voodoo mathematics. It sounds good, but it's
22 mathematically flawed.

23 MSHA, on page 42140 of its proposal, addresses

1 concentration by setting a daily maximum concentration of
2 coal dust exposure to a miner. MSHA made the following
3 statement, "MSHA developed the existing coal mine dust
4 standards from eight hour shift exposure measurements.
5 Therefore, if you take a sample over a period other than
6 eight hours you must adjust the concentration measurement to
7 be equivalent to an eight hour exposure."

8 This statement is incorrect. It mixes the term
9 concentration and exposure. An average concentration is
10 simply the average of the dust weight per unit volume of
11 air. Concentration is not time dependent, as MSHA tries to
12 make it. You can have the same concentration in coal dust
13 over one hour as you do over 24 hours.

14 Exposure, on the other hand, is cumulative in
15 nature. The Mine Act and MSHA, throughout the preamble to
16 the proposed regulations, confirm this. The examples
17 include on page 42127 of the preamble, "For example, to
18 effectively monitor the mine environment for miners' work or
19 travel it is essential that respirable dust samples are
20 representative and that they reflect typical dust conditions
21 to which the miners are exposed."

22 The Mine Act uses the term average concentration
23 throughout. In Section 202(c)(2), the law states the

1 ability to reduce such dust to the level required to be
2 maintained. Section 202(b)(5) requires the operator to
3 maintain continuously the average concentration of the
4 respirable dust in a mine atmosphere during each shift and
5 the working places of such mines.

6 It is clear that the Mine Act uses the term
7 concentration to mean the average concentration of two
8 milligrams per cubic meter of error. However, MSHA's use of
9 the 480 minute maximum completely destroys the integrity of
10 the use of concentration. What MSHA appears to be trying to
11 do is to reduce the longer work shifts back to the eight
12 hour work shift. Why else would MSHA add the 480 minute
13 maximum? It clearly does nothing more than penalize longer
14 work shifts. This shouldn't be MSHA's focus. MSHA's focus
15 should be the average exposure rates during working shifts.

16 One flaw in MSHA's theory could be observed in the
17 example where the operator uses shifts of less than eight
18 hours. When MSHA speaks of travel time diluting the
19 calculated concentration, simply doing the calculations
20 using a six hour work shift with a one hour travel time, the
21 accumulated dust during this work shift will be less because
22 the one hour travel time would generate almost no dust.
23 Instead of working a five day work week, the miner would

1 then be required to work, you know, roughly a six and a half
2 day work week to give him his 40 hours of total work.

3 The same number of total hours as with the longer
4 work shifts, but different compliances with MSHA's
5 definition of concentration. The key is the exposure of
6 miners to coal dust of a long period of time, the cumulative
7 exposure. Even MSHA recognizes the importance of cumulative
8 dust exposure on page 42155 of the preamble.

9 Whether a miner works four 12 hour shifts or six
10 eight hour shifts or eight six hour shifts, the cumulative
11 exposure is the same, and that's after adjusting out, you
12 know, the travel time. MSHA's proposal to adjust
13 concentrations to an eight hour equivalent is mathematically
14 flawed and clearly biased against longer work shifts. The
15 eight hour equivalent is not an adjustment of the
16 concentration measurement to equate it to an eight hour
17 exposure. It's simply a biased calculation aimed at
18 reducing longer work shifts.

19 If a company was borderline compliant on an eight
20 hour shift and then began working a ten hour shift, the
21 company simply wouldn't be able to meet the two milligram
22 standard in that ten hours under this proposal. If MSHA
23 wants to use a 480 minute factor, it should adjust the dust

1 standard accordingly, you know, mathematically however it
2 should be adjusted.

3 Finally, we feel that the use of the 480 minute
4 factor is in conflict with proposed Section 72.500 that
5 requires that measurement accurately represents atmospheric
6 conditions to which a miner is exposed during such shift.
7 "One certainly can't do this if one tampers mathematically
8 with the figures that go into the calculation of the
9 measurement that represents atmospheric conditions."

10 With regard to the verified mine ventilation plan,
11 on page 42141 of the preamble MSHA says that a verifiable
12 administrative control would mean a work practice intended
13 to reduce a miner's full shift exposure to respirable dust
14 hazards by altering the way in which work is performed.
15 Examples include rotation of miners to areas having lower
16 concentrations of respirable dust, rescheduling a task and
17 modifying work activities to reduce exposure.

18 We have some questions. What credit is given for
19 the rotation of employees? Where does the air pump go?
20 Does sampling follow the miner or stay with the MMU? We
21 feel that the paperwork associated with this will be
22 substantial and, more importantly, we feel that it will be
23 confusing.

1 We have several other general comments. We feel
2 that MSHA should insure that the equipment that is sold to
3 the mining equipment meet standards that's promulgated by
4 MSHA. We feel like MSHA, pursuant to Section 102 of the
5 Mine Act, should form an advisory committee using expertise
6 such as NIOSH to insure that new machinery sold to the coal
7 industry is in full compliance with existing MSHA health
8 standards.

9 MSHA has the duty to insure that equipment sold to
10 the industry can comply with current regulatory
11 requirements, and we feel that that is actually a mandatory
12 duty to insure that whatever is purchased by the coal
13 industry can meet the applicable health standards.

14 We also feel that the impact on small businesses,
15 small mines, will be significant. MSHA should also -- we
16 feel that MSHA should also publish a study on the impact on
17 small businesses, on small mines and the small businesses
18 that actually work with all mines. The study on the impact
19 on small business should be for the first 12 months of this
20 new rule, whenever it becomes effective, and should report
21 it no later than the fourteenth month.

22 With regards to the use of hired air purifying
23 respirators, i.e., airstream helmets, we feel that they

1 should be encouraged by MSHA, contrary to what you've heard
2 earlier today. On page 42138, MSHA "...encourages mine
3 operators to adopt new and better dust monitoring technology
4 as part of the approved ventilation plan." If this is true,
5 then why not allow the use of the airstream helmet
6 technology?

7 Airstream helmets should be allowed in all mines,
8 not just long wall mines. The Mine Act, in Section 202(h),
9 states, "Use of respirators shall not be substituted for
10 environmental control measures in the active workings." We
11 read this provision as saying that engineering or
12 environmental controls should first be used before
13 respirators are allowed. Respirators should not be
14 considered as substituted when environmental control
15 measures are unable to reduce dust in the mine atmosphere.

16 The Mine Act does not preclude, however, the use
17 of airstream helmets as effective dust control. MSHA should
18 not discourage the use of new technology when the new
19 technology can effectively reduce the miners' exposure to
20 dust. MSHA should be ashamed of itself for not requiring
21 the use of airstream helmets if it would eliminate a coal
22 miner's exposure to dust. The Mine Act certainly does not
23 restrict new technology that would have such a positive

1 effect on the miners' health and neither should MSHA.

2 In summary, I'd like to talk very briefly on
3 economics. I know this hasn't been touched on much today,
4 but I'm seeing a trend, which is very disturbing. I'm
5 seeing a trend east of the Mississippi, and I am not
6 singling out Kentucky, Illinois, Virginia, West Virginia,
7 any state, but I'm seeing a trend of production east of the
8 Mississippi, underground production, declining.

9 You might actually say why is this happening?
10 Well, there's other fuel supplies that are taking the place
11 of the coal that's been produced east of the Mississippi
12 typically by underground methods. The coal is coming from
13 the Powder River Basin where you have these seams that are
14 40, 50 feet thick, very low sulfur.

15 Syn fuels, which is a new coal product. You've
16 got tax credits of \$26, \$27 a ton for using these syn fuels,
17 and these utilities are really gobbling this up. They're
18 estimating that it will replace 40,000,000 to 50,000,000
19 tons of coal in the near term, in the next four or five
20 years. That will come out of the areas that because it's
21 mining these old gob tunnels and it's located really east of
22 the Mississippi again, so that's going to replace coal east
23 of the Mississippi.

1 Natural gas. You're seeing the utilities switch
2 to natural gas. Why? To comply with the Clean Air Act
3 requirements. Natural gas has several advantages over coal.
4 It can take away the price, and the price is outrageously
5 high. We've seen the increases. Natural gas requires a
6 smaller plant. They can build these plants within a year
7 and a half, two years, a small location, and when you turn
8 that gas on there's no residue. There's no flash, no waste
9 that the utility has to worry about disposing of. The only
10 drawback, which is the major drawback, is the enormous price
11 of natural gas, the fluctuating price and the availability
12 of the supply.

13 The other impact on American coal is coal that we
14 see coming from South America, and it's usually hit a lot of
15 our markets in Florida and in states along the coast. This
16 has taken markets away from coal that's mined in Kentucky,
17 Illinois, Indiana, West Virginia, Virginia. You know, it's
18 replacing it, simply replacing our markets. That coal is
19 very low sulfur. It's mined very cheaply overseas, and it's
20 barged across the ocean to our consumer utilities in the
21 southeastern states.

22 As we watch the production falling, we're also
23 watching the employment falling. Fifteen years ago, we used

1 to have 50,000 miners in Kentucky. You know, today I'd
2 venture to say we have a whole lot less than 15,000. I
3 think that officially you might see a number around 15,000,
4 but I don't think it's that.

5 We're not just losing the miners, you know. We're
6 losing the management. You know, I've worked with people
7 over the last 20 years that have lost their job. You know,
8 these are the management. You know, miners are losing their
9 jobs, and management people are losing theirs. The next
10 thing is it's going to have to be the rank and file at MSHA.

11 I don't think you all can justify regulating a
12 declining industry at the same levels as you all are using
13 now on the inspectors and the personnel. It may not affect
14 you all in Arlington, but it's sure going to affect the rank
15 and file that you're going to see out in the various states.
16 I just want to point that out because that is a factor that
17 needs to go into this.

18 You might ask, you know, why is all this
19 happening? I could blame over regulation as the sole cause,
20 but that's not fair to say, just over regulation by itself.
21 One other major factor is the Clean Air Act. You know, the
22 year 2000 restrictions of the Clean Air Act is devastating.
23 You know, Illinois, Indiana and Ohio, western Kentucky, and

1 now these restrictions are starting to flow over to eastern
2 Kentucky.

3 There's a lot of coal reserves in eastern Kentucky
4 that are just absolutely not compliant as we look at the
5 2000 Clean Air Act restrictions. You're going to have, you
6 know, similar coal in West Virginia and Virginia that will
7 also be knocked out of the market because it can't meet the
8 sulfur requirements.

9 Also, you know, I'd like to blame MSHA for its
10 share of cumulative incremental costs. When we're seeing
11 regulations on diesel, ventilation regs, noise, dust and
12 numerous other regs that we've seen over the last several
13 years, it has certain cumulative costs associated with it
14 that impact the cost of that ton of coal that's mined by
15 underground mining methods.

16 It gets to the point where one by one these mines
17 will drop out because they can't afford to compete because
18 there are just more costs on that kind of coal, as opposed
19 to coal that are competing from the Powder River Basin or
20 maybe from some of these large surface operations or South
21 America or syn fuel where the coal is just simply going to
22 be too expensive to mine economically, and these mines are
23 going to slowly one by one drop away. You don't notice from

1 going. You can't put your finger on exactly what the reason
2 is, but they're going to drop out because they can't afford
3 to stay in the marketplace.

4 The goal of MSHA is to protect the miner. I think
5 they're heading toward an unmitigated success in that regard
6 because, you know, sooner or later there's not going to be a
7 lot of miners working so you're going to protect this guy
8 because he's not even going to be working in the coal
9 industry. Just keep that in mind. You need to balance your
10 protection of the miner along with, you know, keeping him on
11 the job and keeping him working, which is important.

12 I don't think there's a lot of other livelihood
13 that you're going to find in the coal fields. The coal
14 fields just simply are not diversified. Unfortunately, coal
15 mining is the only viable occupation that you find in the
16 coal fields. We need to keep that a very viable occupation.

17 It's well paying. These guys -- you know, it's a
18 tough job. They deserve every penny they make. You know,
19 coal mining is not easy, but I'm quite proud of these guys,
20 you know, that's here behind us. They do a good job, and
21 the American coal miner, you can't be more prouder of him.

22 In closing, I'd like to say I've never seen an
23 industry that's been regulated into prosperity. All that

1 happens is that we're going to lose jobs, and we're going to
2 lose our jobs overseas.

3 Thank you.

4 (Applause.)

5 MR. NICHOLS: Dan Spinnie?

6 MR. SPINNIE: Dan Spinnie, S-P-I-N-N-I-E. I'm
7 from Local 2161, United Mine Workers, Coulterville,
8 Illinois.

9 A lot of this stuff has already been gone over,
10 but I've come 500 miles so I'm going to go ahead and do it
11 anyway.

12 MR. NICHOLS: We're going to let him.

13 MR. SPINNIE: Which brings me to my first point.
14 How come we don't have one of these closer to the midwest?
15 You've got two of them out here east and you've got one out
16 west. I mean, who decides this, where these are going to be
17 held at?

18 MR. NICHOLS: My guess is it's a collective
19 decision of a lot of people at MSHA. I don't know.
20 Obviously I don't have the final say.

21 MR. SPINNIE: Okay.

22 MR. NICHOLS: We'll keep you in mind for the next
23 set of rules.

1 MR. SPINNIE: Okay. Thank you.

2 The Mine Act requires that, you know, and we've
3 already talked about this engineering thing, but I want to
4 go on the record as saying that we need to use all these
5 engineering devices before we go to these airstream helmets.
6 I don't know nothing about them. I've never used them, but
7 from what I've seen about them and heard about them they're
8 not good. They're uncomfortable. They're hot, from the
9 folks I've talked to. I just want to go on the record as
10 saying that we should go the engineering before we resort to
11 that. It's a last result.

12 I had one question on that. In the very end, who
13 decides if all these engineering controls are over with or
14 exhausted?

15 MR. NICHOLS: That would be a discussion with the
16 inspector, the supervisor, the district manager and finally
17 up to me.

18 MR. SPINNIE: And then when are they over? I
19 mean, is there a time limit when you use all these? Do you
20 know what I'm saying? When is it over?

21 MR. NICHOLS: It's over when your best collective
22 thinking is that there's nothing else that can be done, but,
23 as I said earlier, let's say we make that determination and

1 then something new appears on the scene. Then we would
2 expect those new things to be implemented.

3 MR. SPINNIE: All right. As far as the walk
4 around rights, we've already discussed it. As I said, I
5 want to go on the record as saying that it's a good thing.
6 I've been safety committee man for 15 years at my mine, and
7 we have a good working relationship with MSHA. We help
8 them. They help us. These miners' reps and the miners
9 themselves, they know this mine better than anybody.
10 They're on the front lines every day. I would not like to
11 see that leave.

12 On the outby sampling, probably in 1980 in our
13 mines we was a small operation. We didn't have much belt
14 line to contend with and belt drives and outby locations
15 where a lot of dust was generated, but over the years these
16 belt lines have got bigger. The horsepower on the drives
17 has increased, more belt lines, and I think we need more
18 than one sample taken on these outby areas.

19 Speaking on the production levels that are going
20 to be monitored, back when we had our last set of hearings I
21 guess it was back in the 1990s, early 1990s, I spoke, as a
22 lot of gentlemen here have spoken tonight, that things
23 aren't done the same way on sample days as they are on

1 regular days. I don't know what somebody called it. Legal
2 cheating. I've seen that happen. I don't know what we can
3 do about it other than raising the tonnage, you know,
4 raising the percentage of the tonnage. I don't know what
5 can be done about it.

6 As far as raising the standard to 2.33 milligrams,
7 in 1997 the mine where I work at went to a super section
8 running two machines on a split tail ventilation. Since
9 then, we've been out of compliance. I don't know if this
10 has been addressed on these split tails as doing something
11 different with this, but certainly we don't want to increase
12 it. You know, it's like one gentleman said. If you're
13 going to do anything with it, take it to 1.75 and cite them
14 at two, you know, if it's a legal thing.

15 On these super sections, first of all, do you
16 understand on a split tail ventilation? Are you familiar
17 with that?

18 MR. NICHOLS: Yes, the group is.

19 MR. SPINNIE: I'm not real familiar with it
20 because we've only had it a couple years and we've had our
21 problems, but that's what I'm talking about because ever
22 since -- we've been out of compliance ever since we've had
23 this. We've been under an order for almost a year at

1 Zeigler No. 11 Mine, Old Ben Coal Company/AEI or whoever it
2 is.

3 One other thing I wanted to mention. You probably
4 know about this, but I'd like to voice a concern on it that
5 on page 42177, Part 70, the scope does not appear in this
6 current regulation under the definitions in the CFR. Do you
7 understand? Part 70, subpart (a), where it says
8 Definitions. The word scope does not appear in there as it
9 does in the regulations, the CFR.

10 MR. NICHOLS: We understand.

11 MR. SPINNIE: Okay. That's all I have for now.
12 Thank you.

13 MR. NICHOLS: Okay. Thank you.

14 (Applause.)

15 MR. NICHOLS: Steve Wolfe?

16 MR. WOLFE: My name is Steve Wolfe, W-O-L-F-E,
17 UMWA Local 1969, Crown Chee Mine, Burton, Illinois. I'm a
18 safety committee man.

19 I've been in the mines for 24 years. I don't know
20 much about long walls because we're in the heartland of farm
21 country so we can't long wall so I can't talk about that. I
22 don't know anything about airstream helmets.

23 What concerns me is this yearly sampling of outby

1 areas. I myself am a belt shoveler. I have been for six
2 years, and the conditions of the beltways change daily or
3 even quicker. I cover approximately eight miles of belt
4 every day. I work six days a week, eight hours a day.

5 Now, how can one sample in a year give you the
6 information on how much dust I am around in 48 hours a week?
7 I've been along belt lines where you couldn't see ten foot
8 in front of you one minute. Go back in an hour, and it's
9 clear.

10 Also, it's not just me. Our examiners spent half
11 of their day working on the belt lines examining the belt
12 lines. Also, one-third of our shift is outby. You know,
13 it's not just respirable dust that we're concerned with.
14 It's the idea that we could have a mine explosion. A lot of
15 belt fires are from dust, hot roller ignition.

16 I've heard talk of this continuous monitoring,
17 which doesn't work on miners because they can't stand the
18 rigorous impacts. I thought that this would be a place
19 where a continuous monitor could work on the belt lines.
20 Like we said, there are some things the companies do on dust
21 sampling days, and one of those are make sure there's water
22 on the belt so that the dust is allayed on the belt line.

23 My question to you is why would our outby people

1 be less important than the coal producing people?

2 MR. SCHELL: The answer is clearly they're as
3 important. I'll try to at least explain to you why. In our
4 proposal, we suggested that we would sample outby DAs at
5 least once a year, and I underscore the words at least.

6 When we look at the data that we receive from our
7 sampling outby DAs now and the data that we receive from the
8 operator outby sampling, we collect a lot of samples outby.
9 Very few of them show high dust levels. I think last year
10 there were perhaps eight citations issued outby.

11 It was with that in mind that we felt that we
12 needed to continue to monitor those definitely and focus on
13 where we have problems. If you just look at our experience,
14 most of the problem appears to be at the faces, not at the
15 outby.

16 You raise that question. A lot of people have,
17 and that's an issue --

18 MR. SPINNIE: Right.

19 MR. SCHELL: -- we certainly need to consider, but
20 that's what led us to that conclusion.

21 MR. SPINNIE: Well, I would suggest that if you
22 would come to the mine and look at me when I come up out
23 from underground there isn't anybody any blacker than I am

1 at the end of the day.

2 MR. SCHELL: We understand your comment. My
3 calculation is it ranks in the top five of the most
4 commented on here.

5 MR. SPINNIE: That's all I have. Thank you.

6 (Applause.)

7 MR. NICHOLS: Keith Flower?

8 MR. FLOWER: Hello. My name is Keith Flower. I'm
9 the chairman of the health and safety committee for Local
10 2397 of the United Mine Workers. I also work at Jim Walter
11 Resource No. 7 in Brookwood, Alabama. It's good to see some
12 of you all. I've seen some of you in the past and had some
13 comments on other areas of the law.

14 I appreciate the opportunity to address all of you
15 concerned the new proposed regulations, but I must say that
16 I shouldn't be having to address such ridiculous
17 regulations. I, too, have drove approximately 500 miles,
18 and I believe today that it's a waste of my time to have to
19 be here. That's no throw back to any one of you all, but I
20 honestly believe if you all care about the welfare of the
21 miner down there working that you wouldn't propose such
22 regulations as we have today, as best I can understand them
23 anyway.

1 I have read through them numerous times, and still
2 to this day I don't really understand, you know. I read the
3 preamble and I read the proposed rule, and I don't
4 understand how they conflict with each other and what they
5 say and what they don't say. I'm going to best try to
6 address some of the concerns I have that I've had probably
7 with the old regulations also that's not addressed in the
8 new regulations.

9 Nearly all, if not all, the proposed regulations
10 continue to put miners at high risk for black lung and other
11 respiratory disease. I must remind you that miners are
12 dying every day of black lung, and it is time that we put a
13 stop to this.

14 You know, I heard the gentleman talk a while ago
15 from the coal association, and it took me back. My father
16 died from black lung. I was age four, so I was raised up
17 without a father. I've heard other people today testify
18 having to see their father go through this awful disease and
19 die. I guess maybe I'm blessed that I didn't.

20 I heard him talk about the burden that this might
21 put on the operators and that miners are not put out of
22 work. Let me say today I assure you if you'll call my
23 mother, which is about 82 years old, that she would tell you

1 if she had the opportunity to go back she'd have rather been
2 on welfare than to have my father working in conditions and
3 died at an early age. There's just something that touched
4 me as this guy was talking. I wasn't even planning to talk
5 about it.

6 You know, today I realize my job is real
7 important, and I need my job, but I don't want to end up at
8 the age of 60 and be dead. I'd rather see my grandkids grow
9 up, my kids, so let's remember today the most important
10 thing I feel like you all's job is is to put out rules that
11 will protect the miner that's down there working, not to
12 raise the profits of the coal operator. I don't think that
13 you all have a right or a responsibility to that. I know
14 that we need to stay in business and keep the job, but I
15 also know there's ways of doing that, and I'll share some of
16 them in just a moment.

17 First off, Marvin, you asked earlier to a guy
18 that's from Alabama, Jim Walter No. 5, if there wasn't
19 people in Alabama wearing airstream helmets. Like I said, I
20 work at Jim Walter No. 7. I can attest that we're not
21 wearing them. We've tried them in the past.

22 I've had the opportunity to go into several other
23 mines and inspect other mines, the U.S. Steel operations,

1 some of the Drummond operations, and I can tell you to this
2 day that there is not a single union mine that I know of in
3 the State of Alabama, in talking to some of the other
4 operators or mine operators, that wear airstream helmets
5 today and work on a daily basis.

6 I would challenge -- if you've been told they do,
7 I would challenge whoever told you that and see. That's
8 what I want to start off talking about. I know you don't
9 want to hear about it because you're heard a bunch, but I'm
10 going to anyway.

11 First off, in lieu of using airstream helmets, in
12 lieu of engineering controls for respirable dust
13 compliances, first of all I want to talk about some personal
14 experiences. Back in 1990, JWR No. 7 Mines was out of
15 compliance on the dust standard. During this time it was
16 allowed to mine just about two-thirds of a panel out of
17 compliance.

18 The union started taking position of this,
19 starting raising the issue with MSHA. MSHA came in at this
20 time and started changing and went and said they was going
21 to put us under 060 sampling. The first thing -- not the
22 second, not the third, but the first thing management had
23 stated was we cannot operate under 060. We will shut the

1 coal mines down.

2 The first position that UMWA took with Joe Main
3 and several others in the local subcommittee that we was not
4 going to allow our miners to wear airstream helmets. The
5 second position was we was not going to allow the mines to
6 be shut down; that we was going to sit down and try to work
7 and try to come up with engineering controls that would keep
8 that mine operating.

9 We went to doing this. We sat down and came up
10 with a plan. At that down it was called a downwind sampling
11 plan used in the hanging method. I don't whether any of you
12 all remember that.

13 MR. NICHOLS: We're quite familiar with it.

14 MR. FLOWER: It was real complicated in some
15 areas, but it gave the miner some protection as far as
16 working downwind how long they could be exposed.

17 As I said, we sat down and came up with a new dust
18 control plan which calculated downwind time for the shear
19 and added several engineering controls. We accomplished
20 getting several sprays added, including shield sprays onto
21 our long wall shields. It first started out with our plan
22 saying we're going to wet down the top of our shields. We
23 came up with adding the shield sprays.

1 You know, when we first started talking with
2 management they wanted airstream helmets. They said there's
3 no way -- no way -- that you can add shield sprays to the
4 top of these shields to wet down the shields as they
5 advance. We accomplished doing that. We did not even wait
6 until we got new shields in. We retrofitted the shields
7 that we had and started putting some. They're not as good
8 as the ones we have today, but they did start having some.

9 We have a continuous problem still today, though,
10 with the operator maintaining the controls that are
11 installed. If these regulations are implemented, you can be
12 assured again that the first thing the operators are going
13 to scream is that there's not any engineering controls
14 available and cannot develop any that can be installed to
15 reduce respirable dust. That's the first thing they're
16 going to holler after they come to you and tell you we've
17 tried this, we've tried that and we've tried this.

18 That brings me to the point of you saying well,
19 we're not going to raise the standards to four milligrams.
20 I understand what you're saying, but if you read the rule in
21 essence you are raising the standard on long wall to four
22 milligrams, up to four milligrams, for the person downwind
23 of the shear.

1 Now, I don't know. From the school I come from
2 the only way you can interpret that is raising it. I know
3 you say this is after everything has been exhausted, but the
4 operator has to come back and show you all what they've
5 done, what's out there, that there's nothing else out there,
6 and then it's going to be raised.

7 Like I said, again, in 1990 if we had had this in
8 place we would have been forced to wear airstream helmets
9 today. Airstream helmets also pose several other dangers to
10 the miners working on the long wall. As you've heard
11 already, the visibility is greatly reduced, and historically
12 on our long walls faces continuous roll out, causing large
13 rocks to roll out into the walkways. By wearing these
14 helmets, the miner cannot see from side to side; therefore,
15 causing the miner to be covered up and possibly killed from
16 the rocks.

17 I said before we have tried to use the airstream
18 helmets at our mines in the past. The miners wouldn't use
19 them because they could not communicate with each other.
20 The guys today, I think you heard him up here trying to
21 testify. We couldn't hear him in the back, and there wasn't
22 any other noise going on in this room like there are on the
23 long wall face.

1 Also, I think one gentleman testified about people
2 chewing tobacco. How many times do you think that guy
3 working downwind is going to keep that face shield down when
4 he's got a dip of tobacco or chew in his mouth to spit?
5 He's going to be raising it up continuously to do that.
6 Therefore, if he's working in 3.5 milligrams he's going to
7 be exposed to higher levels of concentrations.

8 You talk about -- the NIOSH study that I read
9 talks about the guy looking into the air, facing into the
10 air at all times. This is not feasible for a person to do
11 that. If on our long walls that person is constantly facing
12 the air, then all the rocks from behind him, which we
13 historically get coming up the panel line and rolling over
14 into the face, could also cause a great danger to him.

15 I also remind you that -- excuse me. I also don't
16 understand where MSHA gets their information about the state
17 raising the dust standard to four milligrams by using
18 airstream helmets. From the testimony today and re-reading
19 the preamble and all, I see something NIOSH does come up
20 with, but I also didn't see in there anywhere, as Max talked
21 about earlier, where they tested it using high velocities of
22 air.

23 I think you've all been in our mines. You know

1 the high velocity that we have on our long wall faces. At
2 no time do you ever go down there and find we're using 400
3 or 500 foot per minute. There's always extreme higher
4 levels than that due to methane levels. There's no way we
5 can operate without it. Actually, it creates us some more
6 dust problems from having to have so much ventilation on our
7 face.

8 We strongly believe that not only would using
9 these airstream helmets expose miners to higher risk of
10 black lung. It would create other dangers to the miners. I
11 must remind you again, and I have a totally different
12 interpretation of the Mine Act than what the fellow that was
13 representing the coal operators a while ago had.

14 Let me read. Section 203(h) of the Mine Act
15 plainly states that the use of respirators shall not, and I
16 underline shall not, be substituted for environmental
17 controls, measures and active workings. I think it's
18 plainly stated. I don't think you should be reading
19 anything else in it except it was not the intent of Congress
20 to be able to put something on a miner that was going to
21 reduce the dust concentration that had been if you had to
22 clean the environment up. We believe that this portion of
23 the proposed rule makes it clear that MSHA believes that

1 compliance is not important to the miner working down there.

2 Secondly, I think that's enough on airstream
3 helmets. I believe you've got the message today. I hope
4 you have anyway.

5 Let's talk about the single shift and full shift
6 sampling. UMWA has been complaining and communicating to
7 MSHA for years that miners are not being monitored under
8 normal working conditions due to the fact that samples are
9 being taken on an eight hour portal to portal, and miners
10 are being required to work up to ten hours a shift.

11 We've been requesting that samples be taken for
12 the entire shift on which the miners are being exposed.
13 This is the only way we can be assured of what levels of
14 dust concentration miners are being exposed to on a daily
15 basis. Here again I want to give you a true experience that
16 I had. Let me rephrase that. That one of my other
17 committee men had here in the past July, this last month.

18 In July of this year, an MSHA inspector ran dust
19 pumps on the long wall of our mines. When he arrived on the
20 long wall, he started checking all the dust parameters,
21 which included taking water pressure readings on the shears
22 -- and other areas of the long wall, all the dust
23 parameters, which took him approximately an hour to an hour

1 and a half to take all these readings before mining could
2 even be started.

3 In talking to the miners and from my own
4 observation of the long wall, this procedure is not done on
5 every shift when they are not sampling. An inspector took
6 up the samples also 45 minutes before the end of the eight
7 hour shift in order to get the pumps outside by the allowed
8 eight hour sample time. Therefore, the miners was only
9 being sampled for approximately six hours of the actual
10 mining cycle being done.

11 When I say this is not done on every shift, when
12 our people go down there when they're not running dust
13 pumps, when the inspector is not down there, they go down
14 there, and they have gauges on the shear, the incoming water
15 pressures to the sprays and everything so all they do is
16 look at their pressure gauge to see that they got the same
17 amount of pressure coming to it, make sure all the sprays --
18 eventually look at the sprays and make sure they're working.

19 This has been approved by MSHA for them to do
20 that. They don't have to go and get a gauge. They put it
21 on the drum, so they're going to put it on each spray to
22 check and see how much pressure they've got. That's the
23 reason when the inspector comes in he does it this way, and

1 that's one of the reasons that it takes so long for him to
2 do it. It wasn't that he wasn't trying to do his job.
3 Actually, I think he was trying to do his job properly to
4 make sure. If these samples was taken for an entire shift
5 the miners worked, then it would be harder for the company
6 to manipulate the sampling process.

7 You'll have to excuse me. I've got notes wrote on
8 every different topic here. Here again, I must remind all
9 of you that we're continuously having miners die of black
10 lung and other respiratory disease caused by exposure to
11 mine dust. Until we start sampling miners for their entire
12 shift, we will not know what engineering controls to add to
13 reduce exposure to the respiratory dust concentration.

14 It is not only the right of the miners to be
15 protected from respirable dust, but it's MSHA's
16 responsibility to make sure that operators maintain the dust
17 concentration below or at allowable limits. This rule does
18 not do that. We, the working miners, demand that MSHA
19 demolish this proposed rule and go back and start over with
20 a new rule by adopting the recommendations of the federal
21 advisory committee's recommendations that was approved and
22 which was appointed by the Secretary of Labor.

23 Here again I'll stop for a minute. Why should we

1 have wasted all this money putting this task force together,
2 this committee together, and get their recommendations and
3 throw them out the window? I challenge you, each and every
4 one of you. Go back and get the advisory committee reports
5 and compare it to what you all come up with. Basically
6 that's what you're doing. You took a couple good ideas out
7 of there. Again, I think you was on the right start with
8 the full shift sampling, but you just didn't carry it
9 forward enough.

10 I remind you that my understanding of this
11 advisory committee, it was made up of two people from labor,
12 two people from management and five independent people.
13 Each and every one of them agreed on that report. Each and
14 every one of them I believe signed off on that report, so I
15 believe that if you had adopted that report then the UMWA,
16 labor and management would not have had a right to complain
17 about what's in that report because they all signed off and
18 agreed on what was in there. They had their representation
19 there.

20 We have also requested that miners or miners'
21 representatives be allowed to participate in all sampling
22 procedures, whether it was for compliance or plan
23 verification, at no loss of wages to the employee, but there

1 is none in the proposed rule. Operators surely, surely will
2 challenge the policy or preamble if it is not mandated in
3 the rule, and it is likely that miners will not participate.
4 There again, I heard I think Mr. Schell, and maybe you, too,
5 Marvin, saying that they will have the right.

6 Let me address policy and preamble. I have over
7 the years of being involved in the safety committee, I have
8 dealt with policy. I have dealt with MSHA subdistrict
9 managers, MSHA district managers. I have seen policy change
10 from one manager to another manager, subdistrict manager to
11 manager. I've seen inspectors interpret the policy totally
12 different.

13 Recently, a few years back, I seen a lot of policy
14 changes change. The first thing when I contested a lot of
15 this thing was that it will not hold up in Court. I've been
16 told that numerous times by a hearing officer, by an ALJ in
17 a Court case that I was in with a person at Jim Walter
18 Resources. That policy cannot and will not be mandated by
19 the law. It has to be final rule before it can be upheld.

20 I'm not saying that some of them haven't got by,
21 you know, and been enforced that way, but any that's
22 challenged can be throwed out. I firmly believe that.
23 Again, if it's not in the rule don't expect it to happen.

1 I'll give you another example of the company that
2 I work for, how I guarantee you they will challenge it.
3 Back in November, 1991, and this is all documented in the
4 105(c) that was filed, and I can show you reports on it.
5 The safety committee man at my mines was discharged, the
6 company stating that he was not staying close enough to an
7 MSHA inspector that was on the No. 1 long wall to evaluate a
8 proposed dust control plan.

9 The foreman stated that the committee man was
10 spending too much time at the shear and talking to the
11 workers about the conditions of the sprays and also to MSHA
12 inspectors about the plan not being followed. The committee
13 man at all times was within 15 feet of the inspector, but
14 yet he was discharged.

15 Therefore, the operator plainly demonstrated that
16 they don't want miners' reps with the inspectors when it's
17 required by the Mine Act under the protective rights, so
18 they sure won't allow miners' reps to be part of any dust
19 sampling which is not required by the final rule, there
20 again underlining final rule, not preamble.

21 For years, UMWA has been complaining to MSHA about
22 the operator conducting their own compliance sampling, how
23 easy it was for them to manipulate the dust sampling

1 procedure. I've stated I think to you, Marvin, personally
2 and to Lawrence Schell at -- and at other places I always
3 give this example. It's like me or you driving down the
4 highway. We notice that we're going too fast so we pull
5 over and give ourselves a ticket.

6 You know, that's what the operator in a sense in
7 essence does by doing their own sampling. That's what I
8 feel it's like. Hey, we're out of compliance so we're going
9 to sample and give ourselves a citation. No, most of the
10 time they're not. They're going to try to manipulate the
11 system and keep from getting that violation.

12 Therefore, I appreciate, and I underline really
13 appreciate, you taking or saying that you're going to take
14 over the operator sampling procedure because I believe that
15 should have been done years ago and needs to be done today.
16 The only problem is I don't see anywhere in the final rule
17 that says you are going to take them over. It says that
18 you're going to do all the sampling, but in essence what
19 you're going to do is sample at least six times a year.
20 Therefore, we're going to be losing all that sampling that
21 the operators do.

22 You asked a guy earlier today well, do you all not
23 want us to do away with operator sampling? I guess if it

1 came down to having no sampling or the operator sampling
2 some, I guess we're better off having the operator sample
3 some, but I think it's been mandated and I think all the
4 testimony will show that MSHA should take over all sampling,
5 but not reduce it. Not reduce it.

6 You talk about manipulating the system. If they
7 know you're coming six times I guarantee you they're going
8 to make sure the plan is being followed once the plan is
9 approved, the verification plan has been approved. They can
10 make sure that that plan is right for that period of time
11 you're coming.

12 They can afford to operate a whole week because
13 you get to a point as a miners' rep and as an operator. You
14 can about figure when MSHA is going to come and run dust
15 samples. All you've got to do is keep it on the calendar
16 when they've been there last, so it will be a lot easier for
17 them to do.

18 As I said again, this is ridiculous. We asked for
19 more efficient sampling. As a result to our request, we get
20 less sampling and higher levels of allowable dust
21 concentration.

22 What MSHA is proposing in this final rule is to
23 steal, and I underline steal. It's like taking candy from a

1 baby or something or going to the store and getting a candy
2 bar and not paying for it. Steal the health from the
3 working miner is what this rule does.

4 I'm about to wrap up. I just have a couple more
5 things here. I guess the first question, and I think it's
6 been asked, but I want to re-ask it for the record, is why
7 is it not in the final rule? You know, it's in the
8 preamble, but why is it not in the final rule that miners'
9 representation will have the right to be with MSHA on all
10 inspections, plan verification, abatements, compliance and
11 all in the final rule? Why is it not put in the final rule?

12 MR. NICHOLS: Well, it's clear in the preamble,
13 but we have a comment about, you know, we know your desire
14 to have it in the final rule, which we'll consider.

15 MR. FLOWER: All right. Another one. On this
16 plan certification, the way I understand it's set up, and
17 correct me if I'm wrong. The operator is going to get
18 everything they think they've got that needs to be in place,
19 set it up on the long wall or the miner section, as far as
20 that goes, that they think can be in compliance. Then
21 they're going to call you all or MSHA --

22 MR. NICHOLS: Yes.

23 MR. FLOWER: -- and you all will come out and

1 sample it. Is that correct so far?

2 MR. SCHELL: I don't know if they'll call us,
3 Keith, but you're right. We will notify them that we plan
4 to do verification sampling. Then they have to get prepared
5 for us to do that.

6 MR. FLOWER: Okay. All right. So why is it then
7 once they say they're ready to have the verification of the
8 plan, why is it if MSHA comes out and samples and they're
9 out of compliance there's no citation written?

10 MR. SCHELL: The purpose is to test that plan to
11 see if it works at these high levels.

12 MR. FLOWER: Right.

13 MR. SCHELL: So it may not work, which means they
14 may have to do some more.

15 MR. FLOWER: Okay. Do you think, though, you
16 know, these miners are having to work in these high
17 concentrations of dust this whole time when they're out of
18 compliance, this month or two months or three months it can
19 take for them to finally notify you all or either you all
20 notify them that we're coming out. The miners are exposed
21 to higher levels.

22 You come out. You sample and find out that plan
23 is not working, so then you come around and tell them

1 they've got to do something else. No citation, no abatement
2 time, nothing that the union can challenge, nothing that the
3 union has a right to go -- under the Mine Act, but yet they
4 could have another month or two months, and you come back
5 and sample again and it still might be.

6 Do you understand? If you write a citation, then
7 you have to put an abatement time. The union at that time
8 will have a right to challenge that abatement time, whether
9 we say no, MSHA, that's too long. I believe we've got good
10 inspectors, okay, but I honestly believe that those working
11 miners and miners' reps has more of a feeling of what time
12 it would take to abate a certain citation, how long we
13 should give operators.

14 I guess you're not going to give me an answer that
15 I like. The statement I'm trying to make is take that under
16 consideration.

17 Talking about the highest average production, this
18 is going to be based on eight hours or ten hours of
19 production that you talk about they're going to have to put
20 in their plan. You know, you talk about well, we're going
21 to go with the highest percentage of the production.
22 There's nothing that I see spelled out in there that says
23 okay, even though people are working ten hours, you know,

1 what are they putting in the plan, what those people produce
2 in an eight hour period or what they produce in that ten
3 hours or that 12 hours?

4 MR. SCHELL: It's required to be put in the plan.

5 MR. NICHOLS: Full shift?

6 MR. SCHELL: And required to be put in the plan.

7 MR. NICHOLS: Full shift and required to be put in
8 the plan.

9 MR. FLOWER: Okay. Is that in the final rule?

10 MR. SCHELL: Yes, sir.

11 MR. FLOWER: It is in the final rule? What part
12 of the final rule?

13 MR. SCHELL: Keith, there's a section that
14 describes new information that has to be added to the
15 ventilation plan. It relates to 75 to 300. There's a
16 section at the end of the final rule where it talks about
17 new things that have to be added to the ventilation plan.
18 It's in that portion of it.

19 MR. FLOWER: It does spell it out?

20 MR. REYNOLDS: Yes. I was going to say also I
21 think we've had this -- a lot of people didn't realize it
22 was in the proposed rule, but everything in the existing
23 ventilation plan submission and approval process would apply

1 here, so the identification requirements. None of that
2 changes. That would still be in place, so the miners'
3 representative would have to be notified, and copies of
4 everything that went back and forth would have to be posted
5 on the bulletin board.

6 The additional information is also the one part of
7 the actual rule which gets the list of what the operator has
8 to include in the ventilation plan, which includes the shift
9 plan.

10 MR. FLOWER: Okay. That brings me to another
11 question then, I guess. If they put a number in the plan,
12 we produce this amount of tons, and as a miners' rep, as the
13 lawyer said, I have a right to comment on any plan
14 submitted. Thank goodness that hasn't been took away yet,
15 but if I challenge that, their numbers are wrong, then what
16 resources are you all going to use to come back and
17 determine whether they're putting the proper numbers in the
18 plan or not?

19 I mean, I don't see a big change today from when
20 the inspector comes out there. He calls the engineer on the
21 phone and they say well, we produce this many tons. I mean,
22 all he's got to do now is write it in his book. How are you
23 going to be assured that he is accurate in telling me what

1 he produced?

2 MR. SCHELL: On the tonnage, there's a
3 requirement, and it's a new requirement, Keith, that the
4 operator has to record production on every MMU every day,
5 and that's a record that they have to keep.

6 MR. FLOWER: Right.

7 MR. SCHELL: So if we have reason to believe that
8 those records aren't accurate, number one, we're going to be
9 talking to people like you. Also, we can come out and do
10 physical measurements to see what they're doing, but our
11 experience has been when you require an operator to document
12 every day on every MMU they're very careful about it because
13 they know that if they screw up there's a written record
14 that demonstrates that they've screwed up.

15 So just the fact that they have to keep that
16 written record and the fact that there are people like you
17 and the fact that we can make those measurements, we ought
18 to have a pretty good idea whether those records are
19 accurate or not.

20 MR. FLOWER: Okay. I would disagree with you on
21 what you said about the operator making sure. I can show
22 you numerous violations now where they're supposed to record
23 in our boss book examination of an accurate record that's

1 been taken, what they did and what they didn't do. You go
2 down there, and you see totally opposite of what they wrote.

3 As a matter of fact, a common statement is area
4 clear. Area clear. They you go down there are write 15
5 violations. You know, it doesn't seem like the area would
6 be clear.

7 It just seems to me that without MSHA getting
8 involved and taking their own measurements, there again
9 talking to the miners, the miners' reps, having them in the
10 plan verification process, the operator could, and I ain't
11 saying he would, but I'm saying the possibility is left out
12 there for him if he mines 100 foot to come out and say well,
13 I mined 70 feet, 80 feet.

14 There again, even though I work in a pretty large
15 mine and have several memberships, I know we put a high,
16 high burden on our local if they had to pay me to be with
17 the inspector on plan verification, much less on the
18 operator going down critiqueing their plan. If it was all
19 spelled out, we would be there throughout the process to be
20 assured to be a set of eyes for MSHA, a voice for the miners
21 to MSHA to know what we've recorded and what we know that
22 they've produced.

23 There again, in the final rule there's nothing for

1 that in there. You know, there's nothing stating how you're
2 going to get them measurements or how the operator is going
3 to get them measurements. There's another loophole. I
4 think attorneys know about loopholes; at least mine did.

5 I'm trying to wrap up here. Here again, I've
6 talked about I know policy can't be enforced. One other
7 thing I want to touch or a couple things that I'm going to
8 try to touch. The main thing is I want to make it clear
9 that, you know, once the operator has notified MSHA that
10 they're ready for them to come out and sample for a plan
11 verification, how long -- there's nothing in the rule that
12 says how long MSHA is going to wait before they come to each
13 MMU to make that plan verification.

14 There's nothing in the rule that mandates that.
15 Therefore, if the budget was cut, the money was taken away
16 and you couldn't afford the personnel, it could go on for
17 months because there's nothing mandated that we will be
18 here, MSHA will be here, at a certain time and make that
19 plan verification.

20 Again, I know that you sit here and say you can be
21 assured we're going to be there, and I've learned from
22 dealing with the agency, with MSHA over the period of time
23 and with the operators that if there's nothing in final

1 print written out that mandates it, then there's no recourse
2 that the miners have, so please take that into
3 consideration.

4 My miners might be exposed to over three
5 milligrams of dust up to a six month period of time. The
6 possibility might not be but two weeks, three weeks, but,
7 you know, and I would like to think at my operation I would
8 be taking some more avenues as it was addressed here today
9 under the 103(g).

10 What I'm trying to say is why put something in the
11 regulations that I would have to be forced to use that
12 avenue when we can put it in a mandated rule now that spells
13 how long an operator is going to have before you come in and
14 make the verification? The answer is going to be here a
15 certain amount of time. There's nothing that states that in
16 there anywhere. There's nothing that gives any time frame
17 or any time amounts. I can have all the good intentions in
18 the world, but sometimes I don't have the resources myself
19 to do all of it.

20 I think it was stated and we all know that there's
21 a possibility of a change, an administrative change due to
22 the election coming up, an election year, so when we make
23 the final rule let's make it as clear as we can. Put

1 everything in it that mandates what we're going to do and
2 when we're going to do it. Then we have some avenues to
3 come back at.

4 Lastly, I think, unless something else comes to
5 mind, I want to address one thing that I think I heard Mr.
6 Schell talk about today or asked for comments on, and it's
7 the abatement samples. I want to make it clear today before
8 I leave even though I don't have all the answers at this
9 time. I do want to let you know that we believe that a
10 higher level of confidence should be required on abatement
11 samples.

12 You know, that level of confidence could come from
13 several different ways, I guess. I don't have all the
14 answers, but I definitely believe that even though I don't
15 really believe there's going to be many abatement samples.
16 I'll tell you that right now. In this rule, I don't think
17 there's going to be many citations written to the mine
18 operator. That's one of the problems that I have. I think
19 this gives so many leeways for violations not to be
20 existing. I do believe that we do need a higher level of
21 confidence in that area.

22 That's all I've got right now. If you're got any
23 questions -- I might think of something else, though.

1 MR. NICHOLS: I better say no. Thanks.

2 MR. FLOWER: Let me say this. If you do have any
3 questions --

4 MR. NICHOLS: In closing.

5 MR. FLOWER: In closing, as the preacher says. In
6 closing, if you have any questions at any time, don't
7 hesitate to write them. My address is available. Send them
8 to me. Call me.

9 MR. NICHOLS: We know where you work.

10 MR. FLOWER: Thank you.

11 MR. NICHOLS: Okay. Thank you, Keith.

12 (Applause.)

13 MR. NICHOLS: David McAteer?

14 MR. MCATEER: Good evening, Mr. Chairman, other
15 panel members. My name is David McAteer, D-A-V-I-D,
16 M-C-A-T-E-E-R. Like a couple of other guys said, I've come
17 a long ways. Although everything has been pretty well
18 covered, I'm going to go ahead and state.

19 I'm been a UMWA safety representative for 15 years
20 at Jim Walters No. 4 Mine, Brookwood, Alabama. I came here
21 to speak today on behalf of over 300 miners at our mine. I
22 need to get our message across loud and clear. It's been
23 said many times today. Go back to the drawing board. These

1 two proposed rules as they are now will eliminate or
2 undercut a key portion or the key protections coal miners
3 currently have.

4 Go back to the drawing board and follow the
5 federal advisory committee's recommendations. Do not
6 increase dust levels. Do not reduce dust sampling
7 frequencies. Do not replace engineering controls with
8 respirable protection or administrative controls on long
9 walls.

10 The advisory committee called for lowering dust
11 exposure levels. The committee called for increasing
12 compliance sampling. The committee called for environmental
13 controls to continue to be the method to control coal mine
14 dust and not to be replaced by respiratory devices. MSHA's
15 proposed rules allow respiratory devices to replace
16 environmental controls while increasing dust levels. It's
17 wrong. It's going to prolong progress and reforming the
18 coal mine dust problems. MSHA should get back on track and
19 follow the advisory committee's recommendations.

20 Mr. Chairman and panel members, you have heard and
21 will hear many more serious problems with these proposed
22 rules today. By no means is this all we found wrong with
23 the proposed rules. I'll say it again. It's wrong to raise

1 dust levels. It's wrong to reduce dust sampling. It's
2 wrong to reduce coal miners' protection from black lung.
3 It's just plain wrong. Somebody at MSHA should stand up and
4 admit it's wrong, but say they're going to make it right.

5 Thank you.

6 MR. NICHOLS: Thank you.

7 (Applause.)

8 MR. NICHOLS: Greg Mahan?

9 MR. MAHAN: My name is Greg Mahan. I'm from
10 Illinois. I'm the local union president. I'm glad to be
11 here today, and I'm glad you let me speak. I'm very
12 disappointed. I've come over 500 miles, and I'm tired.

13 First, the board did not follow the federal
14 advisory committee's recommendation. That's very
15 disappointing to me. Second, you did not listen to the
16 miners. They have spoken for many years. You did not
17 listen to the International in their lawsuit. If I could
18 fill out a citation, I figure that would be reckless
19 disregard.

20 To get on to the matter that I have, there are
21 many submissions that I need to bring up that I'm concerned
22 about. At my mine, we have just changed to a new system.
23 It's a blow in system, and the State of Illinois has already

1 considered that outby people don't matter no matter what.

2 To sample one time per year is very minimal. It's
3 not right. We have more dust problems now than we've ever
4 had inby and out. The citation levels, the flow air
5 readings, have increased since December of 1999 since this
6 has been implemented as a blow in system.

7 One gentleman talked about the outby being dusty,
8 and if that's in the ventilation plan they should be
9 required to dust every day. I have codaphoned the federal
10 at least three times in the last three months. The last one
11 was last Wednesday or Thursday, and before I got to the mine
12 the codaphone was faxed to the company.

13 The inspector was there on a regular inspection.
14 He was told to go back below. While on his rounds, he
15 wanted to know. They were attempting to water the roads.
16 As long as they're attempting to do whatever they're going
17 to do, there's no citation that will be written in my mind.
18 Just like too many open cross cuts. As long as they're
19 attempting to work on something, no citation.

20 On that matter, I also support a higher level of
21 confidence required on abatement samples. In that I'm
22 asking a question here. What provision in this proposal
23 will empower miners' representatives to assure that between

1 plan verification approval and compliance sampling that the
2 operator will comply with the approved plan?

3 MR. NICHOLS: Well, you've got the operator
4 himself. You've got the inspector. Then I would expect the
5 safety committee is going to be attentive to that, too.

6 MR. MAHAN: We hope so. I mean, we can go as far
7 as the miners' representative here. The board says its
8 intent is to have us go and not lose no pay. We hope the
9 commitment will be made that they will be allowed. It will
10 be rule.

11 The companies are already saying that they're
12 going to challenge our participation in this. We hope the
13 board, knowing that they are intentionally intending to
14 require us to go, we hope that this rule will be law, not
15 just an intention. We need a commitment.

16 Another question I'm asking. I think Dan Spinnie
17 said they have a section where they have two machines. The
18 question I have, and I've seen this before. If they know
19 that a section or a unit is high in respirable dust, I've
20 seen them shut the section down and say something is wrong.
21 It's down. It's not running. Something is wrong.

22 If they have two machines in that unit, will you
23 allow them to shut one machine down and sample one or wait

1 and come back when both machines are running?

2 MR. NICHOLS: I think we want to verify the plan
3 the way they normally operate.

4 MR. SCHELL: Yes. Clearly it depends on how
5 they're ventilating it, if both sections are ventilated on a
6 separate split.

7 MR. MAHAN: It will be coming down the travel way,
8 fishtail, two miners running at the same time. If they know
9 that one machine is high or going to be high or just say,
10 for instance, when they come in and do their -- one side of
11 the mine is drove up farther than the other. They know the
12 ventilation is going to be a problem. Will they be allowed
13 to shut down one of those miners and sample just the one?

14 MR. SCHELL: Well, clearly if we knew what you
15 just said, no.

16 MR. MAHAN: I mean, whether or not I say what I'm
17 saying. Just say, for instance, they know that that
18 machine, one of those machines, could be out of compliance.
19 Could they just say we're not running that machine today and
20 you go ahead and sample that one machine?

21 MR. SCHELL: With verification sampling, that
22 wouldn't be allowed.

23 MR. MAHAN: Okay. I mean, I know the company I

1 work for. I've seen it done. Right now we're not talking
2 about dust sampling. We just got these new coal haulers.
3 Okay. They're taking production out of one unit and adding
4 it onto this unit.

5 MR. NICHOLS: Would that be one or two?

6 MR. SCHELL: That would be two, but again we'd be
7 interested in seeing -- you know, if we're going to verify
8 that section, we want to see it operating the way it --

9 MR. MAHAN: Normally would?

10 MR. SCHELL: -- normally would be.

11 MR. MAHAN: Okay. It is my belief that the only
12 way to make this program effective is to have miners
13 included in the sampling process. We're there. We should
14 be included.

15 You know, a few years ago a lot of us were
16 certified by the MSHA inspectors to take methane checks. We
17 were certified, got the little card back. A lot of the
18 individuals didn't have -- weren't certified by the State of
19 Illinois, so MSHA come in and certified them to take methane
20 checks.

21 Well, I think it would be a little bit different
22 than having somebody take a spotter out, but I believe for
23 this to be more effective that the miners at that facility,

1 that mine, knows what goes on and can see how this is going
2 to work, and we would feel more confident if we would have a
3 say so in this.

4 Actually, you know, not only do we go with the
5 inspectors to see that everything has been followed, but we
6 also go with the inspector. If the company challenges him,
7 we're there on his side. You know, this will happen. Under
8 these guidelines or these proposals, if my company with no
9 representation, that MSHA inspector, it's his word against
10 the money.

11 I believe that our confidence would grow with MSHA
12 if we were involved and included in this process. I believe
13 actually that we all need to take a stronger and harder look
14 at the dust sampling throughout this country. It's been a
15 problem since day one that coal was taken out of the ground.
16 It still is, and it always will be.

17 We've asked for over a quarter of a century to
18 have continuous monitoring, and we haven't done it. The
19 company, in my mind, is continuously monitoring their belt
20 lines. Why can't they continuously monitor the dust
21 sampling? I don't think it would cost as much as what
22 they're spending on our belt lines.

23 We have fought long and hard for this. We are

1 willing to fight as long as it takes. We hope the board
2 will take it back to drawing board and not take away our
3 rights and our health.

4 I thank you very much.

5 MR. NICHOLS: Thank you.

6 (Applause.)

7 MR. NICHOLS: Randy Klausing?

8 MR. R. KLAUSING: My name is Randy Klausing,
9 R-A-N-D-Y, K-L-A-U-S-I-N-G. I'm from Illinois, Old Ben Coal
10 Company, chairman of the safety committee. I had a bunch of
11 questions. They were answered, and I'm not going to go back
12 over them.

13 I've got a couple of them I just don't understand
14 here. I know you made a statement that we talked about the
15 rights of the safety people to go with the MSHA. You know,
16 you changed your mind once. I presume he's a lawyer.

17 MR. SCHELL: He is.

18 MR. R. KLAUSING: Okay. Once you said this, you
19 changed your mind. I mean, this was in all this here. You
20 went through all this. I went through this four times, and
21 I still don't understand what the hell it is.

22 MR. SCHELL: What I changed my mind on was --

23 MR. R. KLAUSING: Well, the reason you changed

1 your mind is because your lawyer stopped you. That's the
2 reason why you changed your mind.

3 (Laughter and applause.)

4 MR. R. KLAUSING: I don't want to be smart or
5 nothing, but that's the reason why you changed your mind.

6 MR. SCHELL: And Joe will stop you if you get up
7 and testify the wrong way.

8 MR. R. KLAUSING: Well, there's no doubt. He
9 probably will.

10 MR. SCHELL: I guarantee you he will.

11 MR. R. KLAUSING: Well, that's what I don't
12 understand. There's stuff that you made the statement that
13 you thought was right, but then you --

14 MR. SCHELL: No, no. I said a key word that you
15 guys have been looking for, which was rule.

16 MR. R. KLAUSING: All right. All right. Okay.
17 On the DAs, the designated areas, we've got designated areas
18 at our mine. They're at the drives, okay? What I don't
19 understand is you're wanting to raise the standards on the
20 Part 90 miners to 1.26. It used to be one, and you're
21 raising it. That's outby people, okay, or whatever.

22 We don't sample the people. We sample the drives.
23 Just like the gentleman said. He was a belt shoveler. Now,

1 I don't know how the rest of the mines are. I'm just
2 talking about our mine. Our designated area is at the
3 drives. We've got our shelf wipers, you know. There's
4 very, very seldom you have a spill there at your drive.
5 Your spills are on the belt line where the people are
6 shoveling, but they don't get sampled. The drive gets
7 sampled.

8 That's what I don't understand. You say like you
9 looked up statistics of eight citations. That's probably
10 true because there's very few times that we got cited on our
11 designated area, but if you would sample the belt shovelers
12 or the people that is outby, you would probably get a better
13 feel of what's going on besides designating a drive that
14 does pretty well in air and is very seldom going to be out
15 of compliance.

16 MR. SCHELL: Okay. Well, that's worth looking at,
17 but the theory of this DA concept came into effect in 1980,
18 and the theory, maybe it needs to be reconsidered. The
19 theory was that major dust generating sources are at the
20 faces. If you control dust at the faces, people outby
21 normally would be protected.

22 The unknown was these dust generating sources, so
23 we said instead of sampling the people that are outby we're

1 going to sample these dust generating sources outby. Just
2 like you said, it's a belt transfer point.

3 MR. R. KLAUSING: Sure.

4 MR. SCHELL: We were actually sued by the mining
5 industry for doing that because they claimed that was more
6 stringent than sampling the miners because when you're
7 sampling that dust generating point you're sampling where
8 dust is created, even though there's no miner around there.

9 MR. R. KLAUSING: True.

10 MR. SCHELL: We ultimately prevailed in that
11 litigation, but for the industry their position was that we
12 were sampling a place where miners didn't even work or
13 travel.

14 Our position was if we sampled faces and
15 controlled dust at the faces, if we controlled dust at these
16 generating sources outby, we're going to be protecting
17 miners, so that's the theory in why we have those DAs.

18 MR. R. KLAUSING: In a sense, yes. You're right
19 in a sense and you're not right in a sense because you put
20 the pumps at a special place where it's got the sign, DA,
21 you know, and the whole nine yards, but you got people
22 that's not even very seldom there.

23 The examiners come in to make sure everything is

1 okay, you know. The belt shovelers stop, but the majority
2 of your spillage and your dust is actually on the belt line
3 itself, not the drives. It's mainly because you have to
4 have your head spray at your drive, your transfer point.
5 That's in our plan and all that stuff, but the dust mainly
6 is on your belt lines where the belt shoveler is actually
7 shoveling. He's not getting sampled. You're sampling a DA.
8 You're not sampling that belt shoveler.

9 That's what I don't understand. That's what I've
10 argued numerous times. Why can't we get the outby people
11 sampled? Well, I've never got a complete answer. Can you
12 give me an answer?

13 MR. SCHELL: Again, it may not be the one you
14 like, but that's not the way our program is designed. That
15 doesn't mean if you believe there's an individual that's
16 being overexposed you ought to call the district and ask
17 that that be sampled. We can do that.

18 MR. R. KLAUSING: Well, the only time that
19 actually an outby person gets sampled is if he's a Part 90
20 miner. That's the only time that anybody outby gets
21 sampled.

22 MR. SCHELL: And like I say, it's because our
23 theory is if you're controlling the dust generation points

1 both at the face and on the outby areas, the miner should be
2 protected.

3 MR. R. KLAUSING: Okay. With the Part 90 miners,
4 I know I got -- let's see. Where is it here? Just bear
5 with me. I'll be right with you. I'm not leaving. Okay.
6 Here it is.

7 According to NIOSH, they done a study from 1987 to
8 1996. At least 18,245 people died of black lung, but now
9 we're wanting to raise it to 1.26. That don't make sense,
10 and we're at one percent? Why? Because we've only had
11 eight citations. It don't make sense when we're still
12 having people die of black lung. I don't understand. I
13 don't have a lawyer to grab me either. I don't understand.

14 MR. NICHOLS: I've got a mathematician back here,
15 but I don't know if I want to grab him.

16 We're not raising it because people are still
17 dying. It's the correction factor, right, the sampling?

18 MR. R. KLAUSING: Yes. Well, mainly, and maybe
19 I'm reading it wrong. The reason I guess you're raising it
20 is because you only have eight citations.

21 MR. NICHOLS: No, no. We're raising it because --

22 MALE VOICE: We're not raising it.

23 MR. NICHOLS: Now you got me saying we're raising

1 it.

2 (Laughter.)

3 MR. R. KLAUSING: Boy, I'm glad I was late. See,
4 I got you when you're tired.

5 MALE VOICE: Did the court reporter get that?

6 MR. KOGUT: If a measurement comes in above one of
7 those citation threshold values, then we can issue a
8 citation because we have a high level of confidence that the
9 standard has been exceeded.

10 If a measurement is below the citation threshold
11 value, but above the standard, that does not mean that the
12 line is in compliance. It simply means that we don't have a
13 sufficiently high level of confidence to warrant a citation
14 at that time, but we do not consider the mine to be in
15 compliance with the standard.

16 There's a number of other steps that we might take
17 in that kind of situation. We might come back, for example,
18 and take another sample. We might require -- if we get a
19 sequence of samples that are in the case of the outby
20 samples for Part 90 miners, a few samples that are above one
21 but that aren't high enough to warrant individually a
22 citation, we might require that the plan be verified.

23 MR. R. KLAUSING: Not to be disrespectful, but we

1 had a lot of mights in that. I mean, we might, we might, we
2 might.

3 MR. REYNOLDS: I wanted to say something as well.
4 I mean, this practice of putting that 95 percent confidence
5 level into a situation where you're citing somebody for
6 violating a standard like this, and this is not unique to
7 MSHA. It's the same way with OSHA and their 95 percent
8 confidence level. It's also used by EPA.

9 So it's not a matter of raising the standard.
10 It's just really an enforcement policy or a level at which
11 we will clearly pursue that as an enforcement action rather
12 than trying to get them to either correct the problem or
13 abate the problem, so we're not changing the standard with
14 the 1.2. The standard is still one or two.

15 MR. R. KLAUSING: Okay. I know Ron talked about
16 the six samples a year and the eight hour samples. I know
17 you've heard it millions of times. I don't know about
18 millions of times, but you've heard it numerous times that
19 it's not an eight hour sample. Actually, your pumps are
20 actually probably around six hours actual in the --.

21 Then you said that if there's a citation to abate
22 the citation the inspector would stay the full shift if it's
23 a 12 hour shift, ten hour, nine hour. What's the

1 difference? Why can't we just -- if he's going to stay to
2 abate the citation, why can't he stay there the whole eight
3 hours, nine hours, 12 hours if he's going to stay there to
4 abate the citation?

5 MR. SCHELL: When we were drafting this our view
6 was, and, to be honest with you, we had some questions about
7 it, but our view was that since the real purpose of that
8 sampling was to give us an idea whether that plan continued
9 to reflect mining conditions and whether that plan would
10 continue to protect miners.

11 We felt that since we had production records
12 available to us, since we were there and did the sampling
13 and that we could see the controls that were in place, on an
14 eight hour sample we'd be able to make a judgement as to
15 whether or not that plan continued to be protective of
16 miners, but we were concerned enough about it that we did --
17 if you read the preamble, we said that we had a question
18 about that, and we specifically asked for comments from the
19 public on whether or not we should do compliance sampling
20 for the full shift.

21 MR. R. KLAUSING: True. I've heard you say that.

22 MR. SCHELL: I think we've heard that.

23 I want to go back to the Part 90 if I can --

1 MR. R. KLAUSING: Okay.

2 MR. SCHELL: -- and just clarify one thing. We do
3 understand your concern, but I don't want to leave you with
4 the impression that the Part 90 miner is worse off than they
5 are today because what we do today is that damn averaging
6 again.

7 We take one sample on a Part 90 miner, and if
8 that's high we go out and we take five samples on a Part 90
9 miner and we average them, so there could be a two milligram
10 standard in there. There could be a 1.4 in there. Then you
11 get a couple low ones, and it brings you down below one. We
12 say the Part 90 miner is protected.

13 We are going away from that averaging on Part 90
14 miners to a single sample measure on that Part 90 miner.
15 That will be more protective of that Part 90 miner. That
16 single sample is a significant improvement, but I'm telling
17 you to let you guys know what it is. It doesn't allow the
18 higher readings to be diluted by the lower ones.

19 MR. R. KLAUSING: Yes. I understand what you're
20 saying, but we've had people die for one milligram, what the
21 standard is now, but now we're going to raise it so we don't
22 average out the other five. I don't understand why. Why
23 don't we lower it?

1 If we're wanting to protect the Part 90 miners,
2 let's lower it, not raise it, regardless of the pie divided
3 or however you want to do it. Let's lower it.

4 That's it. You got any questions?

5 MR. NICHOLS: No. I think we understand your
6 comments.

7 MR. R. KLAUSING: Thank you.

8 MR. NICHOLS: Thank you.

9 (Applause.)

10 MR. NICHOLS: Dwight Cagel?

11 MR. CAGEL: My name is Dwight Cagel, Local 2397.
12 I'm on the UMWA health and safety committee at Jim Walter
13 No. 7 Mines, Brookwood, Alabama. I've got 26 years'
14 experience. I appreciate the opportunity to address the
15 panel concerning the new proposed dust regulations.

16 One thing I was going to touch on was the Part 90
17 miner myself and even add a little to it. I know on these
18 under the old rule in Part 70 and 90 miners would read the
19 requirements for sampling, including the time they are
20 required to, the sampling methods to be used, the number of
21 samples to be taken, location, how abatement samples are to
22 be taken, when, how.

23 If this new one comes in, a policy won't do, a

1 discussion of a policy. They don't have no teeth. You
2 can't enforce a policy. That's our opinion. Miners want to
3 know the dust level that they're breathing now. That is one
4 of the reasons that we need more sampling. Six samplings
5 won't do, compliance testing on six production shifts out of
6 600 shifts a year or more that we work. We work seven days
7 a week, holidays. That's mining today. That's what they do
8 at our mines.

9 I think we need to go back to the advisory
10 committee rule and look that over again myself, but just in
11 the past year the people that I've worked with in the past
12 three mines, we have lost four people to black lung disease.
13 It's hard to just see them leave like that, some of them in
14 their late fifties, early sixties. One of them we lost just
15 yesterday. I got a call on the phone through black lung
16 disease.

17 We need to wake up on this about the way we treat
18 Part 90 miners. I know to up the dust standard on them,
19 that won't get it in my book. You're talking about an
20 average. The reason you don't get a citation on it is when
21 you hang the pump on them they'll move them to a less dusty
22 area. I know that's what you're going to do is take dust
23 samples.

1 As late as three weeks ago we run a Part 90 miner.
2 They sent him to the wrong place, and then they sent a man
3 down there to move him to a belt header where it had been
4 sampled to get a lower dust average. They put him on the
5 belt line shoveling. The average would have been high, but
6 it just so happened they made a mistake and sent him to the
7 wrong place. This kind of manipulation is going on.

8 I know everybody is talking about more sampling
9 and more sampling. The reason we need more sampling, just
10 like the wall. We went down, and it took an hour and a half
11 to get things right to run it. They said well, we're
12 working on the spray. We're doing this. We're doing that.
13 They won't run until it's right. More sampling? They'll be
14 right more often. Better running samples? They'll just run
15 them like they want to.

16 As far as running those pumps a full shift, our
17 shift is nine and a half hours on the wall, sometimes ten.
18 That's what we need to run. We need to run a full shift,
19 not six and a half hours. That's what we need as far as
20 running those pumps. Sampling on that? Yes, they can
21 manipulate it because they'll hang the pumps on these
22 people. They know where they're going. It may take an hour
23 to get there. By that time they'll have everything

1 corrected and ready.

2 Bimonthly testing? That won't do. That would
3 just give them more time to run the way they're going to
4 run. We've got plenty of dust on the wall.

5 I had a couple pages of stuff here, but it's been
6 beat to death. Airstream helmets. Everything has been beat
7 to death. Maybe somebody got the point across that we need
8 to go back to the advisory board on the committee rules.

9 That's all I got.

10 MR. NICHOLS: Okay. Thanks.

11 (Applause.)

12 MR. NICHOLS: Mike Nelson?

13 MR. NELSON: My name is Mike Nelson. I work out
14 of District 20, Local 1867, construction. I want to touch
15 base on construction.

16 Not putting the miners down, I think what they're
17 talking about is good, but I've got to look at our problem.
18 The construction workers local, all of the construction
19 workers in the coal mine fields, have no laws at all. We
20 don't have nothing to protect us on our dust. In the shaft
21 and the slope work that we do, we're breathing 99 percent
22 rock dust, and that's from what I understand is far yonder
23 worse than any coal dust could ever be.

1 I mean, it's just we sit down there drinking water
2 all day long. There's no way for ventilation to come down
3 and right straight back up. You get so deep it rolls. The
4 dust rolls. I mean, it don't get out fast enough. We're
5 down there in it eight hours a day, five days a week.

6 I would appreciate it if and when you do go back
7 to the drawing board, consider doing a little something for
8 us. I mean, when we have problems out there in the shaft
9 and slope work we have to write like safeguards, you know,
10 just because we don't have any laws. We don't have nothing
11 to protect us.

12 I want to say thanks to UMWA District 20 and our
13 district rep, Larry Pasquale, because of all the help that
14 they've gave us writing these safeguards. We have had a
15 little help due to them, and I would just appreciate it if
16 you all would see fit to try to help us a little bit.

17 To go back to like, for example, I think it was in
18 May MSHA did -- I've been working a shaft and slope work for
19 seven years. I seen MSHA take a dust test for the first
20 time in May of this year. In June, the company come in,
21 brought an independent, strapped it on me, the dust monitor,
22 sent me in the hole. The foreman knew or our supervisor
23 knew that day that the shift before had shot through a coal

1 seam. Okay. No way to wet that down.

2 I don't care how much water you put on top of coal
3 dust. It will sit there. You get down under it, and you're
4 getting nothing but dust. That's all you're doing. You
5 pick the water up and the dust. That's all. You know, it's
6 really rough on us. He got a bad reading on that dust test
7 there.

8 What did he do? He sent that independent back two
9 weeks later to take another one. Lo and behold, that one we
10 go down and we load and shoot. Everything is wet down there
11 then. No dust. For five hours, that dust monitor drewed
12 clean air from the time we started that morning to the time
13 I went back down on the muck cycle and stated mucking. We
14 mucked three hours and got a dust sample for three hours.
15 He takes that dust sample and runs with it. I ain't seen
16 nobody since.

17 I'm telling you, if he's using that, that second
18 sample, he's doing us dog wrong. Like I say, I appreciate
19 any help that you all can do to write us a few laws to help
20 us out in our dust problem. I appreciate that.

21 That's all I got.

22 MR. NICHOLS: Okay. Thanks.

23 (Applause.)

1 MR. NICHOLS: Mike was the fortieth person that
2 presented comments, and it's 7:00. We still have an
3 additional 31.

4 The next 25 I believe are UMW presenters. Do you
5 want to take a break and go on longer, or do you want to
6 adjourn and pick up at 8:30 in the morning?

7 ALL: Adjourn.

8 MR. NICHOLS: In the morning? Okay. The notice
9 said 8:30. Does anybody want to start earlier than 8:30?
10 The notice said 8:30. Let's stick with that.

11 MALE VOICE: 8:00?

12 MR. NICHOLS: 8:00? 8:00.

13 (Whereupon, at 7:00 p.m. the hearing in the
14 above-entitled matter was adjourned, to reconvene at
15 8:00 a.m. on Friday, August 11, 2000.)

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REPORTER'S CERTIFICATE

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DOCKET NO.: --
CASE TITLE: Public Hearing - MSHA
HEARING DATE: August 10, 2000
LOCATION: Prestonsburg, Kentucky

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
United States Department of Labor.

Date: August 10, 2000

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